1733

SUPREME COURT OF THE UNITED STATES.

No. 280.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY AND
A. FLEMING, APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVOR OF GREENE C. BRONSON,
DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT
OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

1737

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INDEX.

	Original.	Print.
Petition Mil. and Minn. for possession	4	1
Mandate Supreme Court appeal, 2d mortgage	18	6
Mandate Supreme Court appeal, Valette	27	10
Mandate Supreme Court appeal, Mil. and Minn	36	14
Mandate Supreme Court appeal, Mil. and Minn	39	15
Order on receiver to report possession road and rec. of	43	16
Affidavit A. Fleming, illegal possession	44	16
Motion by Mil. and Minn. to show cause, &c	46	17
Order on receiver to show cause, &c.	49	18
Order on Mil. and St. Paul R'y to show cause, &c	49	18
Notices served on receiver and M. and St. Paul R'y of illegal orders	51	18
Proof of notices served on receiver and M. & St. Paul R'y of illegal orders	53	19
Report receiver in answer to order court	56	20
Report Mil and St. Paul R'y, June, 1863	58	21
July, 1863	59	22
August, 1863	60	23
September, 1863	61	24
October, 1863	62	25
November, 1863	63	27
December, 1863	64	28
January, 1864	65	29
February, 1864	66	30
March, 1864	67	31
Petition Mil. and Minn. Co. to amend the Chamberlain petition	68	32
Affidavit A Fleming to petition	70	34
Affidavit Matt H. Carpenter to petition	72	34
Motion complainants to modify decree	74	35

	Original.	Print
Motion complainants for receiver to pay over moneys	75	35
Motion of compl't to strike from files Mil. and Minn. petition	76	36
Motion of Mil. and Minn. Co , vacate orders paying moneys	78	36
Order of reference to master, am't fund on hand, &c.	79	37
Answer receiver to petition Mil. and Minn. Co..	81	37
Answer Chamberlain to petition Mil. and Minn. Co.	99	44
Exhibits to Chamberlain's answer	113	48
Answer Mil. and St. Paul R'y Co. to petition Mil. and Minn Co.	119	50
Exhibit to same, A, earnings eastern division and disbursements, to petition Mil. and Minn. Co.	141	58
Exhibit to same, supplemental mortgage, F. A. Palmer	142	58
Masters' report filed—J. R. Brigham, master	153	65
Receiver's report, month March, 1864	156	66
Order 12th June, 1863, rescinded—rec'r to take possession	157	66
Order dismissing all motions and petitions Mil. and Minn. R R Co.	157	66
Order on receiver to make continuous statement account	157	67
Reference of same to H. L. Palmer, master	158	67
Receiver's report, month April, 1864	159	67
Receiver's report, June 11th, 1863, to May 31, 1864	161	68
Receiver's report, month May, 1864	197	89
Exceptions to receiver's report by A. Fleming	198	90
xceptions to receiver's report by M. & M. R. R. Co.	207	92
Receiver's report, month June, 1864	215	95
Receiver's report, month August, (July,) 1864	216	95
Petition of U. S. Trust Co	217	96
Exhibit to same, "A," Palmer mortgage and supplemental mortgage	225	98
"B," statement U. S. Trust. Co., S. F. due	241	108
"C," statement U. S. Trust Co., balance on hand	242	108
"D," bill Cowdry—services	242	109
Demurrer Mil. and Minn. R. R Co. to same	243	109
Order on master—foreclosure expenses	245	109
Order on receiver to pay court costs, &c.	245	110
Power of att'y and substitution, R. Sage	247	110
Exhibit to same, "A," revocation, &c.	248	110
"B," substitution, &c	250	111
Affidavit—amount of funds on hand, Milwaukee and Minnesota Company	252	112
Petition Milwaukee and Minnesota Company, founded on same	252	112
Petition Milwaukee and Minnesota Company, removal of Crocker, &c	254	112
Affidavit, A. Fleming, attached to same	281	128
Exhibit No. 1, Barnes mortgage	287	129
2, Barnes mortgage, supplement	295	135
3, Palmer mortgage	309	146
4, Palmer mortgage, supplement	316	150
5, Land grant mortgage	325	155
6, "Second mortgage," eastern division	335	161
7, "Western division" foreclosure bill	345	167
8, Eastern division foreclosure bill	357	174
9, Order reference, western division	372	183
10, Masters' report, western division	374	184
11, Complainants' exceptions masters' report, western division	381	188

	Original.	Print.
Exhibit No. 12, Order court, masters' report, western division	384	189
13, Decree, foreclosure, western division	386	190
14, Marshal's report, sale western division	392	194
15, Confirmation marshal's report, sale western division	396	196
16, App't receiver, western division	397	196
17, App't receiver, Howard case	400	198
18, App't receiver, second mortgage	402	199
19, Reference to masters	406	201
20, Masters' report, eastern division	408	202
20½ Complainants' exceptions to master's report, eastern division	415	206
21, Order on report of masters	419	208
22, Decree eastern division case	421	209
23, Order court May 7, 1863, and petition Milwaukee and St. Paul Railway for possession	427	212
24, Order June 12th, 1863, eastern division, and order April 28th, 1864, vacating the same, ditto	432	215
24½, Order June 12th, 1863, western division	436	216
25, Order April 28th, 1864, vacating order June 12th, 1863, eastern division	438	217
26, Receiver's report, month of May, 1864	439	217
27, Opinions Judge A. G. Miller in western division and eastern division causes	440	218
29, Opinions Judge A. G. Miller in western division and eastern division causes	480	237
30, Deed to city of Milwaukee—La Crosse and Milwaukee Railroad	492	253
28, Crocker's (receiver) testimony	498	257
31, Crocker's (receiver) report, August, 1864.	507	260
Decree entered, eastern division case	508	261
Receiver ordered to pay master for services	512	262
Order overruling petition U. S Trust Company	513	263
Order court overruling motion Milwaukee and Minnesota Company for receiver to pay money into court, this cause	513	263
Order court continuing petition Milwaukee and Minnesota Railroad Company for removal of receiver	513	264
Order granting appeal Milwaukee and Minnesota Company	514	263
Receiver's report, filed August, 1864	515	263
Petition of Hans Crocker filed, instructions, &c	517	264
Reports of Mil. and St. Paul R'y Co., filed by Crocker, receiver, March, 1864	521	266
April, 1864	522	265
May, 1864	523	267
June, 1864	524	268
July, 1864	525	270
August, 1864	526	271
September, 1864	527	272
Bond filed, appeal Milwaukee and Minnesota Railroad Company, and A. Fleming for same	528	273
Bond approved	530	274
Certificate of clerk of circuit court	531	274
Citation	531	274

1 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America held within and for the district of Wisconsin, begun and held according to law in the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the 12th day) of September, A. D. 1864.

Present: The Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the ninth circuit, presiding judge of said circuit court, and Honorable Andrew G. Miller, district judge, also judge of said circuit court; Darius C. Jackson, marshal; and A. Scott Sloan, clerk.

Among others the following proceedings were had, to wit:

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb
2 Cleveland, William Gemmell, John A. Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simmons, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip L. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, August Lauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette, defendants.

Be it remembered, that heretofore, to wit, on the 18th day of April, A. D. 1864, being the first day of the stated term of the said circuit court of the United States, begun and held according to law at the court-house in
3 the city of Milwaukee, in and for said district, present the Honorable
Samuel F. Miller, presiding judge of the said court, and the Honorable Andrew G. Miller, district judge, also judge of said court, came the defendant, the Milwaukee and Minnesota Railroad Company, by Mr. Carpenter, its counsel, and filed its petition for an order for possession, &c., as per said petition on file, as follows:

4 *Petition Mil. and Minn. R. R. for possession.*

Circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, *et al.*,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.

To the judges of the circuit court of the United States for the ninth circuit and district of Wisconsin:

The petitioner, the Milwaukee and Minnesota Railroad Company, respect-

fully represents that it is one of the defendants in the above-entitled cause; that by an order in this cause on the 6th day of July, A. D. 1860, made by the district court of the United States for the district of Wisconsin, in which last-named court said cause was then pending, Hans Crocker was appointed receiver of the mortgaged premises mentioned and described in the bill of complaint in this cause, together with the rolling stock and franchises pertaining thereto; and that said receiver very soon thereafter entered into possession of the said mortgaged premises, being the said railroad, known as the La Crosse and Milwaukee railroad, from Milwaukee to the city of Portage, together with the rolling stock and franchises pertaining thereto, and other things of which said Crocker was appointed re-
5 ceiver in this cause, and continued in such possession, operating the said railroad and receiving all the tolls therefrom until on or about the 12th day of June, 1863, at which time, without any right or authority whatever, the said Crocker delivered possession of said railroad, rolling stock, franchises, and other things thereto pertaining, to the Milwaukee and St. Paul Railway Company, a pretended corporation, and that said last-named company has ever since the day and year last aforesaid continued to operate said railroad, and has used said rolling stock not only upon the said railroad from Milwaukee to Portage, but also upon another portion of the so-called La Crosse and Milwaukee railroad, from the city of Portage to La Crosse in said district, claimed by said last-named company to be owned by it; that the pretence under which said receiver claimed the right to deliver said railroad, rolling stock, and franchises to said last-named company as aforesaid, was an order made by the district court of the United States for the district of Wisconsin the 12th day of June, A. D. 1863, as follows:

6 United States district court.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
and others.

June 12th, 1863.—A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Co. and others, setting forth in substance that in pursuance of a decree of this court in that case, the western division of the La Crosse and Milwaukee railroad, between La Crosse and
7 Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee and St. Paul Railway Co. is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Company, who is prosecuting a judgment creditors' bill, and of the Milwaukee and Minnesota Company, in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Co. require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession

1763

and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road, as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Co.; and it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage, it is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee and St. Paul Railway Co. into possession of the eastern division of the La Crosse and Milwaukee railroad, from Portage City to Milwaukee, with the appurtenances, and property, and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof,
8 so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States, for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

9 Your petitioner further shows and represents that said district court had no jurisdiction of this cause on the 12th day of June, A. D. 1863,

when it pretended to make said order, and that the said order therefore was, when made, and ever since has been, absolutely null and void; but that said so-called Milwaukee and St. Paul Railway Company, ever since the said receiver delivered possession thereof, as aforesaid, has continued to operate said railroad from Milwaukee to Portage, and the said rolling stock as aforesaid, and has received, and is still receiving, all the tolls and income therefrom.

Your petitioner further represents, on information and belief, that the said Milwaukee and St. Paul Railway Company has never complied with the said order, made by said district court, as aforesaid, and under which it pretended to take possession thereof, as aforesaid, in this: that it has never paid over to said receiver any portion of the earnings of said mortgaged premises in this cause, of which said Crocker was receiver in this cause, but has converted the same to his own use.

That said receiver has never made to this court, nor to any court in this cause, any detailed statement or report showing the amount of rev-
10 enues, income, and toll received by him as receiver in this cause, nor in
detail the statement of disbursements and expenses by him as receiver in this cause, in the operating of said railroad from Milwaukee to Portage; that said receiver monthly filed statements and reports showing in general, but not in detail, the receipts and disbursements claimed by him to have been received and made in operating said the railroad from Milwaukee to La Crosse, but that said statements are so vague, general, and imperfect, and the statement of the moneys received by said receiver as receiver in this cause, are so mixed up with the statements of moneys in the hands of said Crocker, in other capacities than receiver in this cause, that it is impossible to ascertain therefrom the amount received by him as receiver in this cause.

Your petitioner further represents, on information and belief, that there is now in the hands of the receiver in this cause, about the sum of forty-nine thousand two hundred and three dollars, ($49,203,) which the said receiver admits to be funds in his hands as receiver in this cause, and that there is in the hands of the said Milwaukee and St. Paul Railway Company between two hundred thousand and three hundred thousand dollars of the
11 earnings of the said railroad, and rolling stock, and franchises, of
which said Crocker was appointed receiver in this cause, which are funds applicable, and admitted by said company to be applicable, to the payment of the interest due in this cause; and that both said receiver and said Milwaukee and St. Paul Railway Company have pretended to make disbursements of many thousands of dollars, which have been made illegally, and cannot, and in equity ought not, to be allowed to said receiver in the settlement of his accounts in this cause.

Your petitioner further represents that it is desirous of, and hereby offers to pay into this honorable court such sum of money as, added to that admitted by the receiver in this cause to be in his hands as receiver in this cause, and that admitted by the Milwaukee and St. Paul Railway Company to be in its hands, and which it admits ought to be paid over to the receiver in this cause, will pay the full sum of four hundred thousand dollars, the amount of interest due on the bond and mortgage which this cause was commenced to foreclose, to the end that the said receiver may be ordered by this court to deliver possession of said railroad, rolling stock, franchises, and other things of which he was appointed receiver in this cause, as
12 aforesaid, to your petitioner, which is the rightful, legal, and equi-
table owner thereof, subject to the legal incumbrances existing thereon, and that the true state of the said receiver's accounts may be afterwards fully tried, examined, and investigated in this cause.

Your petitioner further represents that no defendant in this cause, except

your petitioner, claims to be the owner of the equity of redemption of said railroad from Milwaukee to Portage, and the rolling stock, franchises, and other things, of which said Crocker was appointed receiver in this cause, and that no defendant in this cause, pretending to have a claim or lien upon the said railroad, rolling stock, franchises, or other things, as aforesaid, has asked affirmative relief in this cause, by cross-bill or otherwise, independent of the relief prayed by the complainant; and that the said Selah Chamberlain, one of the defendants in this cause, has no claim to the said railroad, rolling stock, franchises, or other things as aforesaid, or to the possession thereof, or any lien thereon. And this defendant further represents that the said pretended lease or mortgage from the said La Crosse and Milwaukee Railroad Company to said Chamberlain, dated September 26, 1857, and the pretended judgment in favor of the said Chamberlain against
13 said last-named company, rendered by the district court of the United States for the district of Wisconsin on the 2d day of October, A. D. 1857, are no longer of any effect whatever; that in a certain cause, afterwards pending in the said district court, in equity, in favor of one Newcomb Cleveland, complainant, against said last-named company and said Chamberlain, defendants, (of the subject-matter of which cause, and of all the parties thereto, said district court then had jurisdiction,) the said court made a decree absolutely annulling said lease, so that the same should not thereafter be of any effect whatever, and absolutely vacating said judgment, and perpetually enjoining the said Chamberlain from "using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by order of said" lease, which said last-mentioned decree still remains in full force, unreversed and unannulled.

Your petitioner therefore prays your honors in said circuit court to make an order in this cause, requiring the said Milwaukee and St. Paul Railway Company to pay, instanter, to the said receiver in this cause any money which said company admits to be in its hands, arising from the
14 operating of the railroad from Milwaukee to Portage, rolling stock, franchises, and other things of which said Crocker was appointed receiver in this cause, and to deliver the said railroad, rolling stock, franchises, and other things of which said Crocker was appointed receiver in this cause, to the said Crocker, instanter, and that the said Milwaukee and St. Paul railway, its officers and agents, may be strictly enjoined from further meddling or interfering with the same, and directing the receiver in this cause to take possession of all the railroad, rolling stock, and franchises of which he was appointed receiver in this cause, instanter, and to operate the same.

2. To make an order that the receiver in this cause be directed to deliver possession of the said railroad from Milwaukee to Portage, and all the rolling stock, franchises, appurtenances, and other things of which he was appointed receiver in this cause to the Milwaukee and Minnesota Railroad Company, on presentation to said receiver by said last-named company of the certificate of the clerk of this court that said last-named company has deposited with said clerk, to pay the amount due in this cause as interest, a sum of money in coin or legal-tender treasury notes of the United
15 States, which will, when added to the amount of money then in said receiver's hands as receiver in this cause, amount to the sum of three hundred sixty-five thousand two hundred sixty-one dollars and five cents, being the whole amount of interest due in this cause, together with a further sum to an amount to be named in said order to meet the costs and charges and expenses of the complainant in and about this cause; and

3. That the said receiver do immediately thereafter file in the office of the clerk of said court a full and detailed statement and account in the form

of debtor and creditor, showing the full amount of all revenues of any and every kind that have come to his hands as receiver in this cause since his appointment, and a full detailed statement of all disbursements made by him, or by others for him, as receiver in this cause since his said appointment; and that any party to this cause may file exceptions to any item or items, or any part, matter, or thing in said account, within forty days after the same shall be filed by said receiver as aforesaid, to be heard according to the practice of this court.

4th. And that the said Milwaukee and St. Paul Railway Company may be ordered to render to this court immediately, on oath, a statement 16 and account in the form of debtor and creditor, showing in detail and item by item the amount of money that have come to the hands of said company or its officers therefrom, since it has had possession of said property of which said Crocker was appointed receiver in this cause, and of all disbursements made by it in operating the same; and that any party to this cause may make and file exceptions thereto, or to any item, matter, or thing therein, within forty days thereafter, to be heard according to the practice of this court, and that said company may be compelled to pay into court, to be disposed of by order of court in this cause, the balance of any which may be found in the hands of said company or its agents, or for such other order or orders or relief in this cause as may be agreeable to equity and good conscience.

The Milwaukee and Minnesota Railroad Company, by—
MATT. H. CARPENTER,
Solicitor and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, says that he is one of 17 the directors of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause; that he has long since and now has charge of the interests of said company in this cause, and makes this verification in its behalf; that he has heard read and knows the contents of the foregoing petition; that the same is true to his own knowledge, except the matters and things stated therein on information and belief, and that as to those matters he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me this 18th day of April, A. D. 1864.
A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

[U. S. rev. stamp, cancelled.]

And thereupon it is ordered by the court that the hearing of the same be set down for Monday next.

And afterwards, on the 19th day of April, 1864, came the said James T. Soutter, survivor, &c., by his counsel, and presented to the court two 18 mandates from the Supreme Court of the United States on the several appeals taken in this cause to the Supreme Court, which said mandates are in the words and figures following, that is to say:

Mandate Sup. Ct.—Appeal 2d mortg'e.

UNITED STATES OF AMERICA, *ss:*

[SEAL SUPREME COURT.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

Whereas lately, in the district court of the United States for the district

of Wisconsin, in a cause between Greene C. Bronson and James T. Soutter
trustees, complainants, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain,
Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland,
William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L.
Simmons, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian
Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair,
19 Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean,
Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile
Bank of Hartford, Con't, August Santhoff, Charles Quentin, John H. Tesch,
Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee,
Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George
W. Chapman, Moses M. Davis, and Charles Howard and Henry Vallette, respondents, the decree of the said district court was in the following words,
viz:

"It was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, masters appointed by this court, wherein the sum of sixty-five thousand two hundred and sixty dollars and five cents appears to be due to the said complainants at the date of said report upon the bonds and mortgage in said bill mentioned, for interest, and five hundred thousand dollars for the principal of said bonds, be, and is hereby, confirmed.

"It is therefore further ordered, adjudged, and decreed, and this court doth
hereby order, adjudge, and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereafter described,
or so much thereof as may be sufficient to raise the amount owing to
20 the complainants for the several bondholders for principal, interest,
and costs in this cause, be sold at public auction under the direction
of the marshal for this district, unless said mortgagor, the La Crosse and
Milwaukee Railroad Company, or some one in its behalf, previous to such
sale, shall pay the said sum of sixty-five thousand two hundred and sixty
dollars and five cents, and interest thereon from this date, together with the
costs in this cause to be taxed.

"And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, where said premises are situated; and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in said city and in the city of New York, at least once in each week, for three months previous to the day of sale; and that said complainants, or any of the parties to this cause, may become the purchaser thereof; and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises; and that said marshal pay to said complainants or their solicitors, out of the proceeds of such sale, their costs in this cause to be taxed, and that he bring the moneys arising from such sale into court for the several bondholders without delay, to abide the further order of the court.

"And it is further ordered by the court that the bonds included in the mortgage may be received in payment of said purchase, at the rate of fifty cents on the dollar, in proportion that each bears to the amount of the sale.

"And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

"And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into such possession thereof as the said mortgage entitles them to, and that any of the parties to this cause who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this cause, has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers, on production of the deed of said premises and a certified copy of the order confirming the report of sale in this cause.

21 "And it is further ordered and decreed by the court that, upon the payment into court of the said sum of sixty-five thousand two hundred and sixty dollars and five cents, with interest from this date, and the costs taxed, and such interest as may become payable on the bonds in the mean time, further proceedings under this decree shall then be stayed. And if at any time hereafter there should be any default in the payment of any interest due on said mortgage, or of the sum of five hundred thousand dollars, the principal thereof, when the same becomes due and payable at the times mentioned in the said bonds and mortgage, the court may, upon petition of the complainants or the holders of said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings shall be had as often as a default shall be made.

"The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complainant in this cause, is as follows, viz:

"All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be, or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other land and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, or either of them. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made, or to be built and made hereafter.

22 "And also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads or either of them; and all the materials, tools, implements and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads or either of them.

"And also all and singular the rights, liberties, privileges and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, aforesaid.

"And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped. Said railroads from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee, westward, is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road, westward of the eighteen miles, is subject to a second mortgage of two hundred thousand dollars.

"But it is further ordered that the marshal do not sell all that part of said mortgaged premises as are embraced in the description, and relating to the railroad from Watertown, by way of Columbus, to Midland, aforesaid, unless the sale thereof should, in the opinion of the court, be necessary and be required for the payment of the amount of the bonds and mortgage mentioned in this bill as settled by this decree, together with the previous liens on the premises described in said mortgage.

"And it is further ordered by the court that the sale of the premises described in the said mortgage and in this bill as the railroad and appurtenances from the city of Milwaukee to Portage City be made subject to the mortgages and liens mentioned therein.

23 "And it is further ordered by the court that the sale of said mortgaged premises be made irrespective of and without regard to any claim or interest of the defendant, Ephraim Mariner, to the same or any part thereof."

24 As by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel: on consideration whereof, it is the opinion of this court that the decree of the district court reducing the indebtedness of the La Crosse and Milwaukee Railroad Company to the bondholders is erroneous, and that the decision should have been for the full amount of one million of dollars and interest. It is therefore now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed, with costs, and that the complainants, Greene C. Bronson and James T. Soutter, trustees, &c., recover against the said respondents, the La Crosse and Milwaukee Railroad Company *et al.*, two hundred and sixty-one dollars and seventy-one cents for their costs herein expended, and have execution therefor. And it is further or-
25 dered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the district of Wisconsin, with directions to enter a decree for all the interest due, and secured by the mortgage, with costs; that the court ascertain the amount of moneys in the hands of the receiver or receivers from the earnings of the road covered by the mortgage which may be applicable to the discharge of the interest, and apply it to the same; and that if the moneys thus applied is not sufficient to discharge the interest due on the first day of March, 1864, then to ascertain the balance remaining due at that date. And in case such balance is not paid within one year from the date of the order of the court ascertaining it, then an order shall be entered directing a sale of the mortgage premises,

under the direction of the court; and on bringing the proceeds into court, they shall be applied to the payment of the balance of interest; and, if they exceed such balance, shall be applied to the future accruing interest down to the sale; and if they exceed that, to the principal of the bonds in case the bondholders assent, or pro rata to those who may assent, and any remaining balance of the proceeds to be invested, under the direction
26 of the court, for the payment of future accruing interest and ultimately the principal; and, further, that in case the interest upon the bonds is paid without a sale, the decree shall remain as security for subsequent accruing interests, and ultimately for the principal; and, further, that the court may pay, out of moneys in the hands of the receiver, or out of the proceeds, the taxed costs of the trustees in the proceedings for the foreclosure of the mortgages, not taxed and received from the defendants in these proceedings; and also such counsel fees, in behalf of the trustees, as the court in its discretion may seem right to allow.

23 Feb.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

27 Costs of complainants:

Clerk	$241 71
Attorney	20 00
	261 71

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

United States of America, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Wisconsin, greeting:

[SEAL U. S. SUP. COURT.]

Whereas lately, in the district court of the United States for the district of Wisconsin, in a cause between Greene C. Bronson and James T.
28 Soutter, trustees, complainants, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd,
29 Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Conn., August Lauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette, in equity—

This day this cause came on to be finally heard upon the bill taken as confessed against the defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Brodhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, F. J. Blair, E. R. Persons, E. Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur thereto, and upon the bill and the answers of the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Flemming and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Edwin C. Litchfield and Ephraim Mariner, and the replication thereto, and the pleadings and proofs, and upon the report of the masters herein filed, and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, masters appointed by this court, wherein the sum of sixty-five thousand two hundred and sixty dollars and five cents appears to be due to the said complainants at the date of said report, upon the bonds and mortgage in said bill mentioned, for the interest, and five hundred thousand dollars for the principal of said bonds, be, and is hereby, confirmed.

It is therefore further ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount
30 owing to the complainants for the several bondholders for principal,
interest, and costs in this cause, be sold at public auction under the direction of the marshal for this district, unless said mortgagor, the La Crosse and Milwaukee Railroad Company, or some one on its behalf, previous to such sale, shall pay the said sum of sixty-five thousand two hundred and sixty dollars and five cents and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, where said premises are situated; and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in said city and in the city of New York, at least once in each week, for three months previous to the day of sale; and that said complainants or any of the parties to this cause may become the purchaser thereof; and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises, and that said marshal pay to said complainants or their solicitors, out of the proceeds of such sale, their costs in this cause to be taxed, and that he bring the moneys arising from such sale into court for the several bondholders without delay, to abide the further order of the court.

And it is further ordered by the court that the bonds included in the mortgage may be received in payment of said purchase, at the rate of fifty cents on the dollar, in proportion that each bears to the amount of the sale.

And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into such possession thereof as the said mortgage entitles them to, and that any of the parties to this cause who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this cause, has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers, on production of the deed of the said premises and a certified copy of the order confirming the report of sale in this cause.

And it is further ordered and decreed by the court that upon the 31 payment into court of the said sum of sixty-five thousand two hundred and sixty dollars and five cents, with interest from this date, and the costs taxed, and such interest as may become payable on the bonds in the mean time, further proceedings under this decree shall then be stayed. And if at any time hereafter there should be any default in the payment of any interest due on said mortgage, or of the sum of five hundred thousand dollars, the principal thereof, when the same becomes due and payable at the times mentioned in the said bonds and mortgage, the court may, upon petition of the complainants or the holders of said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition and the subsequent proceeding thereon, and the same proceedings shall be had as often as a default shall be made.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complainant in this cause, is as follows, viz:

All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other land and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, or either of them. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made, or to be built and made hereafter.

And also all and singular the locomotive engines and other rolling 32 stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads or either of them; and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads or either of them.

And also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland aforesaid.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped. Said railroads from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee, westward, is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road, westward of the eighteen miles, is subject to a second mortgage of two hundred thousand dollars.

But it is further ordered that the marshal do not sell all that part of said mortgaged premises as are embraced in the description, and relating to the railroad from Watertown, by way of Columbus, to Midland aforesaid, unless the sale thereof should, in the opinion of the court, be necessary and be required for the payment of the amount of the bonds and mortgage mentioned in this bill as settled by this decree, together with the previous liens on the premises described in said mortgage.

And it is further ordered by the court that the sale of the premises described in the said mortgage and in this bill as the railroad and appurtenances from the city of Milwaukee to Portage City be made subject to the mortgages and liens mentioned therein.

33 And it is further ordered by the court that the sale of said mortgaged premises be made irrespective of and without regard to any claim or interest of the defendant, Ephraim Mariner, to the same or any part thereof.

34 As by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel:

On consideration whereof, it is ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed, with costs; and that the said defendant, Henry Valette, recover against the said complainants, Greene C. Bronson and James T. Soutter, trustees, &c., forty-two dollars and ninety-four cents for their costs expended herein, and have execution therefor.

And it is further ordered that this cause be *be*, and the same is hereby, remanded to the circuit court of the United States for the district of Wisconsin for further proceedings to be had therein, in conformity to the opinion of this court.

35 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Costs of defendant:

Clerk	$22 94
Attorney	20 00
	42 94

And afterwards, on the 19th day of April, came the complainants, by their counsel, and presented to the court a mandate from the Supreme Court of the United States on the appeal of the Milwaukee and Minnesota Railroad Company from the order overruling and denying its petition and motion for possession of the eastern division of the road as herein filed, as follows:

UNITED STATES OF AMERICA, *ss:*

36 The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

[SEAL SUP. COURT U. S.]

Whereas lately, in the circuit court of the United States for the district of Wisconsin, before you, or some of you, in a cause between James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, complainant, and the La Crosse and Milwaukee Railroad Company and others, defendants, the decree of the said circuit court was in the following words, viz:

"This day came the parties by their counsel, and the petition and motion of the Milwaukee and Minnesota Railroad Company filed herein for an order to place said company into possession of the eastern division of the La Crosse and Milwaukee railroad, having been argued by counsel, and the judges of this court being opposed in opinion as to the jurisdiction of the same, it is ordered by the court that the said petition and motion be, and hereby are, overruled and denied for want of jurisdiction."

As by the inspection of the transcript of record of the circuit court which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears. 37

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before the said Supreme Court, on the transcript of the record, and was argued by counsel: On consideration whereof it is now here ordered, adjudged, and decreed by this court that this cause be, and the same is hereby, dismissed with costs, and that the said complainant, James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, recover against the said defendants, the Milwaukee and Minnesota Railroad Company, two hundred and ninety-two dollars and fifty-six cents for his costs herein expended, and have execution therefor.

23 Feb.

You, therefore, are hereby commanded that such execution proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

38 Witness the Honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

Costs of complainants:

Clerk	$272 56
Attorney	20 00
	292 56

Taxed by— D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Whereby it appears that by the judgment of the said Supreme Court, it

is ordered, adjudged, and decreed by the said Supreme Court that this cause be, and the same is hereby, dismissed with costs, and that the said complainant, James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, recover against the said defendant, the Milwaukee and Minnesota Railroad Company, two hundred ninety-two dollars and fifty-six cents, his costs herein expended, and have execution therefor. Whereupon it is ordered, adjudged, and decreed by this court that the complainant have execution against the defendant, the Milwaukee and Minnesota Railroad Company, for two hundred and ninety-two dollars and fifty-six cents, his
39 costs in said Supreme Court.

And afterwards, on the 19th day of April, 1864, came the complainant, by his counsel and, presented to the court a mandate from the Supreme Court of the United States on the appeal of the Milwaukee and Minnesota Railroad Company from the order overruling and denying its several motions and petitions for possession of the eastern division of the railroad, &c., as herein filed, as follows:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

[SUP. COURT SEAL.]

Whereas lately, in the district court of the United States for the district of Wisconin, in a cause between James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, complainants, and the La Crosse and Milwaukee Railroad Company, and others, defendants, the decree
40 of the said district court was in the following words, viz:

This day came the parties by their counsel, and the motion and petition of the Milwaukee and Minnesota Railroad Company, for an order that the said company be put into possession of the eastern division of the La Crosse and Milwaukee railroad, and the motion of said Milwaukee and Minnesota Railroad Company on file for an order vacating the order of the twelfth day of June, 1863, having been argued by counsel, it is ordered by this court that the said several motions and petition of the said Milwaukee and Minnesota Railroad Company be, and the same are, overruled and denied.

As by the inspection of the transcript of the record of the said district court which was brought into the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before the said Supreme Court on the transcript of the record, and was
41 argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that this cause be, and the same is hereby, dismissed with costs, and that the said complainant, James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, recover against the said defendant, the Milwaukee and Minnesota Railroad Company, three hundred and eight dollars and fifty-two cents, for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the district of Wisconsin.

23 Feb.

You, therefore, are hereby commanded that such execution proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, chief justice of said Supreme

Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-three.

42 Costs of complainant:

Clerks	$288 52
Attorney	20 00
	308 52

Taxed by— D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Whereby it is ordered, adjudged, and decreed by the said Supreme Court that this cause be, and the same is hereby, dismissed with costs, and that the said complainant, James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, recover against the said defendant, the Milwaukee and Minnesota Railroad Company, three hundred and eight dollars and fifty-two cents, his costs herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby, remanded to the circuit court of the United States for the district of Wisconsin. Whereupon it is ordered, adjudged, and decreed by this court that the complainant have execution against the defendant, the Milwaukee and Minnesota Railroad Company, for three hundred and eight dollars and fifty-two cents, their costs in said Supreme Court.

43 *Order on receiver to report possession—road and revenues of, since June* 13, 1863.

And afterwards, on the 21st day of April, 1864, came the Milwaukee and Minnesota Railroad Company, one of the defendants, by Mr. Carpenter, its counsel, and on its motion it is ordered by the court that Hans Crocker, esq., the receiver in this cause, report to this court, on or before Saturday next, what amount of money is in his hands as receiver in this cause, and what amount of money has arisen from the operation of the railroad, rolling stock, and franchises mentioned in the mortgage described in the bill of complaint, and being foreclosed in this cause since the 12th day of June, 1863, and whether the same is now in the said receiver's hands, and if not, in whose hands the same now is.

And afterwards, on the 21st day of April, 1864, came the Milwaukee and Minnesota Railroad Company, one of the defendants, by Mr. Carpenter, its counsel, and on its motion an affidavit filed, as follows:

44 *Affidavit, A. Fleming—illegal possession.*

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others, def'ts.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is one of the directors of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and has charge of its interests on this cause, and makes this affidavit on its behalf.

That since the 12th day of June, 1863, as this affiant is informed and believes, the railroad, rolling stock, and franchises mentioned and describe

in the bill of complaint in this cause, and upon which the mortgage being foreclosed in this cause was given, has not been operated by the receiver in this cause as it was his duty to have operated the same; but that, on the day and year last aforesaid, the said receiver wrongfully, without any right or authority so to do, delivered possession thereof to a pretended corporation called the Milwaukee and St. Paul Railway Company, existing or
45 pretending to exist under and by virtue of the laws of the State of Wisconsin, and having its principal office and place of business in said State and actually doing business in said State, and that said last above-named pretended corporation has since the day and year aforesaid, without any right or authority whatever, used and operated the same and received its revenue and tolls, and is now operating the same and receiving its tolls, and has transferred the said revenues and tolls, to a large amount, to the city of New York, and that the receiver has not received or had said revenues or tolls, or any part thereof; that this taking possession as aforesaid by said last-named company was with the full consent and concurrence of said receiver; and that said receiver is now consenting to the operation of said railroad, rolling stock, and franchises by said last-named company, and the receipt by it of the revenues and tolls thereof.

A. FLEMING.

Subscribed and sworn to before me this 21st day of April, A. D. 1864.

A. SCOTT SLOAN, *Clerk*.

(Rev. stamp, cancelled.)

46 **Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.**

James T. Soutter, survivor, trustee, &c.,
vs.
The La Crosse and Milwaukee Railroad Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and files the foregoing affidavit, and thereon and on the record in this cause, moves for a rule and order of this court in said cause, directing Hans Crocker, esq., receiver in this cause, to show cause before this court, on the opening of the same, on the morning of Monday next, or as soon thereafter as counsel can be heard, why he should not be attached for contempt of court in disobeying the order of the court in this cause appointing him said receiver, and commanding him to operate the railroad, rolling stock, and franchises of which he was appointed receiver in this cause; and an order directing and commanding the said Milwaukee and St. Paul Railway Company to show cause before said court, at the same time and place, why an attachment should not issue against it or its
47 officers or agents, for unlawfully intermeddling with the railroad, rolling stock, and franchises, of which said Crocker was appointed receiver in this cause, and commanding them then and there to pay into this court all moneys arising from the operating of said railroad, rolling stock, and franchises, since the same have been in its possession; or for such other or further relief as the nature of the case may require.

Dated April 21, 1864.

The Milwaukee and Minnesota Railroad Company, by—

MATT. H. CARPENTER, *its Solicitor*.

48 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

James T. Soutter, survivor of Greene C. Bronson, trustee,
vs.
The La Crosse and Milwaukee Railroad Company and others, def'ts.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and moves the court here for an order rule on Hans Crocker, esq., receiver in this cause, requiring him as such receiver to report to this court, on or before Saturday next, what amount of money is in his hands as receiver in this cause, and what amount of money has arisen from the operation of the railroad, rolling stock, and franchises mentioned in the mortgage described in the bill of complaint and being fore- 49 closed in this cause since the 12th day of June, A. D. 1863, and whether the same is now in the said receiver's hands, and if not, in whose hands the same now is.

Dated April 21, 1864.

The Milwaukee and Minnesota Railroad Company by—
MATT. H. CARPENTER, *its Solicitor.*

Ordered, That Hans Crocker, esq., receiver in this cause, show cause 50 before this court, at the court-room in Milwaukee, on the opening of this court on Monday morning next, or as soon thereafter as counsel can be heard, why an attachment should not issue against him for contempt of court, in disobeying the order of the court in this cause appointing him receiver, and commanding him to operate the railroad, rolling stock, and franchises of which he was appointed receiver in this cause; and ordered further that the Milwaukee and St. Paul Railway Company show cause at the same time and place why an attachment should not issue against it, or its officers or agents, for unlawfully intermeddling with the railroad, rolling stock, and franchises of which said Crocker was appointed receiver in this cause. And ordered that the said Milwaukee and St. Paul Railway Company, at the same time and place, pay into court all moneys arising from the operating of said railroad, rolling stock, and franchises since the same have been in its possession, or show cause why it should not so pay said money into court, or why the said Milwaukee and Minnesota Railroad Company should not have such other or further relief as the nature of the case may require. Ordered further, that this rule and the affidavit of Alexander Fleming, upon which this rule is granted, be served on the said Hans Crocker and 51 said Milwaukee and St. Paul Railway Company within twenty-four hours from four o'clock this afternoon.

And afterwards, on the 22d day of April, 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, Mr. Carpenter, and filed proof of service of notices on Hans Crocker, esq., receiver, as follows:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

James T. Soutter, survivor, trustee, &c.,
vs.
The La Crosse and Milwaukee Railroad Company and others, defendants.

District of Wisconsin, *ss:*

Wm. J. C. Forster, being first duly sworn, says that on the 20th day of

June, A. D. 1863, he served Hans Crocker, esq., receiver in this cause, a copy of the printed notice hereto attached, and marked Exhibit No. 1; that 52 on the 22d day of June, 1863, he served a copy thereof upon D. M. Hughes, president of the Milwaukee and St. Paul Railway Company, so called, by delivering the same to each of them personally, at Milwaukee, in said district.

WILLIAM J. C. FORSTER.

Subscribed and sworn to before me this 21st day of April, A. D. 1864.

A. SCOTT SLOAN, *Clerk*,
By JAMES McFARLIN, *Deputy*.

(Rev. stamp.)

Exhibit No. 1.

MILWAUKEE, *June 20th*, 1863.

SIR: Please to take notice that the Milwaukee and Minnesota Railroad Company is the lawful and sole owner of all that part of the late La Crosse and Milwaukee railroad commencing in the city of Milwaukee and extending to the city of Portage, and all fixtures, rolling stock, and personal property purchased for and appertaining thereto, and also of all the corporate privileges, rights, and franchises appertaining thereto, and has the sole right and power to make all contracts affecting said property and rights. And you are forbidden by said Milwaukee and Minnesota Railroad Company to make any contracts for consolidation of said road and property with any other line or lines of railroad, or any contracts for the use and operation of said line of road and property, except the same be made with the said Milwaukee and Minnesota Railroad Company.

Take notice, further, that the order made by the district court of the United States for the district of Wisconsin, on the 12th of June, A. D. 1863, ordering the receiver in the case of Greene C. Bronson and James T. Soutter *vs.* the La Crosse and Milwaukee Railroad Company *et als.*, to deliver possession of said eastern division to the Milwaukee and St. Paul Railroad Company, was made without notice to either party in said cause, made on the court's motion without application in said cause by any party or person, made in the district court, while the said cause was pending in the circuit court of the United States for the district of Wisconsin, and that said order was and is an absolute nullity; and the pretended possession of said eastern division by the so-called Milwaukee and St. Paul Railroad Co. is wrongful and a contempt of the said circuit court, and that proceedings will be taken before the next term of said circuit court to punish the receiver, and hold his bail liable for his obedience to said wrongful and void order.

The Milwaukee and Minnesota Railroad Company, by—

MAT. H. CARPENTER, *Solicitor*.
LEVI HUBBEL, *of Counsel*.

53 Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor of Greene C. Bronson, trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To Hans Crocker, esq., receiver in the above-entitled cause:

You will please to take notice that the Supreme Court of the United States having decided that the order made by the district court of the United States for said district, on the 12th day of June, A. D. 1863, under and by virtue of which you pretended to deliver possession of the railroad from Milwaukee to Portage City, together with the rolling stock and franchises pertaining thereto, and the pretended Milwaukee and St. Paul Railway Company is *coram non judice* and absolutely void, the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint in the above-entitled cause, hereby demands of you that you immediately resume possession of said railroad, franchises, and rolling stock, and operate the same under the order of appointment in this cause, and that you immediately collect from said pretended Milwaukee and St. Paul Railway Company, or the persons pretending to be such corporation, all the rents, revenues, tolls, and income received by it or them from the operation thereof since June 12, 1863; and that the Milwaukee and Minnesota Railroad Company will require you to account therefor, in all respects, as if said void order had not been made. 54

Dated January 20th, 1864.

MATT. H. CARPENTER,
Solicitor and of counsel for the Milwaukee and Minnesota Railroad Company in the above-entitled cause.
A. C. GUNNISON,
Vice-President of said company.
DWIGHT W. KEYES,
Secretary of said company.

{ Mil. and Min. R. R. Company's seal. }

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

55 JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, def'ts.

DISTRICT OF WISCONSIN, *ss:*

Wm. J. C. Forster, being first duly sworn, on oath says that he served an original notice, of which the within is a copy, on Hans Crocker, esq., receiver in this cause, by delivering the same to him personally, at Milwaukee, in said district, on the 28th day of January, A. D. 1864.

WILLIAM J. C. FORSTER.

Subscribed and sworn to before me this 21st day of April, 1864.

A. SCOTT SLOAN, *Clerk,*
By JAMES McFARLIN, *Deputy.*

(Rev. stamp.)

And afterwards, on the 23d of April, 1864, came the receiver and filed his report and account, as follows:

56 Circuit court of the U. S. for the ninth circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To the hon. the judges of said court:

The undersigned, receiver of the La Crosse and Milwaukee railroad, in answer to the order made by this honorable court on the 21st instant, requiring him to report what amount of money is in his hands as receiver, and

what amount has arisen from the operation of the railroad, rolling stock, and franchises mentioned in the mortgage described in the bill of complaint, since the 12th day of June, 1863, and also whether the same is now in his hands, and if not, in whose hands the same is, would respectfully report: That he has now in his hands in cash and unadjusted vouchers $38,172 63; that the whole amount which has arisen from the operation of the railroad in said order referred to, is $236,214 81, and that the Milwaukee and St. Paul Railway Company, now operating said road, have expended and incurred liabilities for and on account of said road and rolling stock
57 to the amount of $167,929 31-100, and for earnings due said Milwaukee and St. Paul Railway Co., from 25th April, 1863, the date of the sale of the western division of the road, to the 13th day of June, and for materials bought, State taxes, &c., and that said amount, except what has been so expended, is in my hands as receiver, to wit: the sum of $68,285 56, making in all in my hands as receiver at this date the sum of $106,458 13.

Milwaukee, 23d April, 1864.

H. CROCKER,
Receiver La C. and M. R. Road.

58 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of June,* 1863.

EARNINGS.

From freight	$21,096 26
From passengers	8,377 69
From mails and rent	777 75
Total earnings	30,251 70

EXPENSES.

Repairs:	
Of road	4,751 90
bridges	482 20
fences	
buildings	149 29
locomotives	337 27
cars	357 56
tools and machinery	18 56
Operating:	
Management and general offices	657 44
Foreign agency and advertising	179 39
Station service	3,024 09
Stationery	
Conductors, baggagemen, and brakemen	1,315 68
Train and station supplies	118 84
Engineers, firemen, and wipers	1,803 22
Oil and waste	
Fuel	2,161 22
Damage to property	
Loss and damage of freight and baggage	8 19
Personal injuries	
Legal expenses	
Car service	29 18

Miscellaneous expenses	$125 81
Telegraph	12 65
Other expenses:	
Interest and exchange	
Expenses of New York office	
Taxes—U. S. revenue	488 25
Freight earnings refunded	358 65
Renewal of track	5,563 80
New buildings	602 85
Use of rolling stock, bal.	4,471 38
Total expenses	26,917 42

RECAPITULATION.

Gross earnings	30,251 70
Total expenses	26,917 42
Net earnings	3,334 28

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee,* 186 .

59 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of July,* 1863.

EARNINGS.

From freight	$26,841 95
From passengers	16,276 94
From mails and rents	1,643 90
Total earnings	44,762 79

EXPENSES.

Repairs:	
Of roads	6,747 82
bridges	250 76
fences	2 50
buildings	1,455 00
of locomotives	503 76
cars	595 33
tools and machinery	36 39
Operating:	
Management and general offices	840 96
Foreign agency and advertising	218 67
Station service	2,630 01
Stationery	
Conductors, baggagemen, and brakemen	1,650 93
Train and station supplies	177 44
Engineers, firemen, and wipers	2,928 77
Oil and waste	651 49
Fuel	2,268 18
Damage to property	

Loss and damage of freight and baggage	$13 21
Personal injuries	
Legal expenses	
Car service	48 96
Miscellaneous expenses	95 55
Freight earnings refunded	182 87
Passenger earnings refunded	19 91
Renewal of track	3,482 95
Other expenses:	
Interest and exchange	
Expenses of New York office	
Taxes and insurance	
New buildings	880 78
Animals killed	31 00
Telegraph	32 50
Use of rolling stock	6,704 30
Use of rolling stock, Hor. div	550 80
Total expenses	33,000 84

RECAPITULATION.

Gross earnings	44,762 79
Total expenses	33,000 84
Net earnings	11,761 95

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee*, 186 .

60 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of August*, 1863.

EARNINGS.

From freight	$21,590 66
From passengers	15,014 45
Mails and rent	1,849 78
Total earnings	38,454 89

EXPENSES.

Repairs:	
Of road	7,776 96
bridges	1,194 24
fences	5 44
buildings	473 07
locomotives	603 60
cars	551 10
tools and machinery	34 27
Operating:	
Management and general offices	632 34
Foreign agency and advertising	421 51
Station service	2,871 83
Stationery	

Conductors, baggagemen, and brakemen	$1,681	21
Train and station supplies	197	20
Engineers, firemen, and wipers	2,824	87
Oil and waste	656	17
Fuel	2,237	85
Damage to property		
Loss and damage of freight and baggage	16	45
Personal injuries	150	00
Legal expenses		
Car service	41	84
Miscellaneous expenses	80	08
Freight earnings refunded	274	44
Passenger earnings refunded	22	64
Use of rolling stock	8,942	25
Other expenses:		
Interest and exchange		
Expenses of New York office		
Taxes—U. S. revenue	220	36
Renewal of track	5,075	59
New buildings	570	78
Construction of fence	188	43
Telegraph	24	82
Total expenses	37,769	34

RECAPITULATION.

Gross earnings	38,454	89
Total expenses	37,769	34
Net earnings	685	55

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee,* 186 .

61 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of September,* 1863.

EARNINGS.

From freight	$86,023	26
" passengers	23,371	56
" mails and rent	1,726	31
Total earnings	111,121	13

EXPENSES.

Repairs:

Repairs of road	7,381	87
Repairs of bridges	854	10
Repairs of fences	224	22
Repairs of buildings	1,226	20
Repairs of locomotives	591	46
Repairs of cars	1,805	98
Repairs of tools and machinery	170	25

Operating:	
Management and general offices	$827 14
Foreign agency and advertising	1,060 61
Station service	3,273 94
Stationery	780 42
Conductors, baggagemen, and brakemen	2,563 08
Train and station supplies	431 61
Engineers, firemen, and wipers	3,372 29
Oil and waste	902 20
Fuel	3,409 40
Damage to property	
Loss and damage of freight and baggage	51 81
Personal injuries	
Legal expenses	
Car service	265 00
Miscellaneous expenses	137 36
Animals killed	74 00
Freight earnings refunded	685 32
Passenger " "	219 60
Other expenses:	
Interest and exchange	
Expenses of New York office	450 43
Taxes—U. S. revenue	
Telegraph	4 20
Use rolling stock, balance	11,069 59
" " H. D.	550 80
Renewal of track	10,606 05
New buildings	400 16
Total expenses	53,399 09

RECAPITULATION.

Gross earnings	111,121 13
Total expenses	53,399 09
Net earnings	57,722 04

DWIGHT W. KEYES, *Book-keeper.*

Auditor's Office, *Milwaukee*, , 186 .

62 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of October,* 1863.

EARNINGS.

From freight	$110,353 33
" passengers	25,595 88
" mails and rent	1,722 32
Total earnings	137,671 53

EXPENSES.

Repairs:		
Repairs of road	$5,323	09
Repairs of bridges	1,911	43
Repairs of fences	61	83
Repairs of buildings	905	47
Repairs of locomotives	480	63
Repairs of cars	2,580	46
Repairs of tools and machinery	297	62
Operating:		
Management and general offices	595	86
Foreign agency and advertising	395	20
Station service	4,254	14
Stationery	944	40
Conductors, baggagemen, and brakemen	2,688	41
Train and station supplies	775	97
Engineers, firemen, and wipers	3,934	60
Oil and waste	994	84
Fuel	4,826	13
Damage to property		
Loss and damage of freight and baggage	41	30
Personal injuries		
Legal expenses		
Car service	23	26
Miscellaneous expenses	41	50
Animals killed	146	00
Freight earnings refunded	1,573	34
Passenger " "	414	73
Other expenses:		
Interest and exchange		
Expenses of New York office		
Taxes and insurance		
Telegraph	91	95
Furniture	242	64
Rent	32	67
Rent of track	40	00
Use of rolling stock	16,453	64
" " Hor. div	530	00
Renewal of track	6,277	24
New buildings	620	04
Total expenses	57,498	39

RECAPITULATION.

Gross earnings	137,671	53
Total expenses	57,498	39
Net earnings	80,173	14

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee*, , 186 .

63 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of November*, 1863.

EARNINGS.

From freight	$66, 053	36
" passengers	19, 955	42
" mails and rent	1, 349	36
" use of rolling stock	1, 209	26
Total earnings	88, 567	40

EXPENSES.

Repairs:		
Repairs of road	4, 825	52
Repairs of bridges	729	90
Repairs of fences	8	15
Repairs of buildings	518	86
Repairs of locomotives	430	16
Repairs of cars	1, 483	67
Repairs of tools and machinery	141	67
Operating:		
Management and general offices	1, 922	38
Foreign agency and advertising	2, 346	76
Station service	3, 766	16
Stationery	605	21
Conductors, baggageman, and brakemen	2, 590	97
Train and station supplies	732	59
Engineers, firemen, and wipers	3, 574	07
Oil and waste	761	82
Fuel	2, 667	49
Damage to property		
Loss and damage of freight and baggage	51	80
Personal injuries		
Legal expenses		
Car service	19	12
Miscellaneous expenses	184	68
Animals killed	250	00
Freight earnings refunded	1, 200	46
Passenger " "	276	42
Other expenses:		
Interest and exchange		
Expenses of New York office		
Taxes—U. S. revenue	1, 450	67
Mail earnings refunded	42	75
Telegraph	26	25
Furniture	20	00
Use of rolling stock	11, 315	22
Renewal of track	5, 420	96
New buildings	425	00
Total expenses	47, 788	71

RECAPITULATION.

Gross earnings	$88, 567	40
Total expenses	47, 788	71
Net earnings	40, 778	69

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee*, , 186 .

64 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of December*, 1863.

EARNINGS.

From freight	$56, 717	00
" passengers	18, 261	90
" mails and rents	1, 792	86
" use of rolling stock	1, 029	04
Total earnings	77, 800	80

EXPENSES.

Repairs:		
Of road	5, 209	17
bridges	707	77
fences	24	28
buildings	649	77
locomotives	634	85
cars	989	56
tools and machinery	305	86
Operating:		
Management and general offices	713	60
Foreign agency and advertising	1, 625	15
Station service	3, 223	17
Stationery	668	52
Conductors, baggagemen, and brakemen	2, 173	10
Train and station supplies	915	11
Engineers, firemen, and wipers	3, 552	44
Oil and waste	1, 533	41
Fuel	2, 592	90
Damage to property		
Loss and damage of freight and baggage	70	24
Personal injuries	75	00
Legal expenses		
Car service	535	93
Miscellaneous expenses	126	10
Animals killed	57	00
Freight earnings refunded	1, 268	10
Passenger earnings refunded	378	12
Mail earnings refunded	53	44
Telegraph	17	86

Other expenses:

Interest and exchange		
New York office expenses from June 13 to Dec. 31	$1, 718	15
Taxes—U. S. revenue	1, 092	93
Renewal of track	4, 728	05
New buildings	571	68
Rents	12	50
Use of rolling stock	10, 504	01
Furniture	399	63
Right of way	190	00
Total expenses	47, 317	40

RECAPITULATION.

Gross earnings	77, 800	80
Total expenses	47, 317	40
Net earnings	30, 483	40

DWIGHT W. KEYES, *Book-keeper.*

ADUITOR'S OFFICE, *Milwaukee*, —, 186 .

65 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of January*, 1864.

EARNINGS.

From freight	$33, 366	62
" passengers	12, 409	17
" mails, rents, and miscellaneous	1, 392	82
" use of rolling stock	710	73
Total earnings	47, 879	34

EXPENSES.

Repairs:

Of road	6, 546	63
bridges	100	99
fences		
buildings		
locomotives	834	05
cars	1, 697	97
tools and machinery	536	05
material	23[illegible]	72

Operating:

Management and general offices	778	36
Foreign agency and advertising	210	56
Station service	4, 729	50
Stationery	211	18
Conductors, baggagemen, and brakemen	2, 149	98
Train and station supplies	984	27

Engineers, firemen, and wipers	$3,693 96
Oil and waste	1,058 85
Fuel	1,905 25
Damage to property	
Loss and damage of freight and baggage	8 63
Personal injuries	
Legal expenses	1,500 00
Car service	19 54
Miscellaneous expenses	82 58
Animals killed	68 00
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	5 00
Furniture	10 34
Other expenses:	
Interest and exchange	
New York office expenses	68 78
Taxes—U. S. revenue	372 28
Renewal of track	2,960 67
New buildings	548 29
Use of rolling stock	7,384 36
Total expenses	38,703 79

RECAPITULATION.

Gross earnings	47,879 34
Total expenses	38,703 79
Net earnings	9,175 55

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee,* , 186 .

66 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of February,* 1864.

EARNINGS.

From freight	$30,567 43
" passengers	13,826 30
" mails, rents, and miscellaneous	1,396 62
" use of rolling stock	788 59
Total earnings	46,578 94

EXPENSES.

Repairs:	
Of road	8,278 24
bridges	
fences	
buildings	226 98

Of locomotives	$645 46
cars	1,664 77
tools and machinery	912 16
Operating:	
Management and general offices	871 52
Foreign agency and advertising	386 07
Station service	3,866 30
Stationery	361 18
Conductors, baggagemen, and brakemen	2,500 99
Train and station supplies	258 84
Engineers, firemen, and wipers	3,574 35
Oil and waste	1,064 42
Fuel	2,045 00
Damage to property	
Loss and damage of freight and baggage	46 25
Personal injuries	35 00
Legal expenses	
Car service	64 60
Miscellaneous expenses	202 56
Animals killed	
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	50 60
Furniture	45 79
Use of rolling stock	9,714 31
Other expenses:	
Interest and exchange	
New York office expenses	179 52
Taxes—U. S. revenue	414 78
Renewal of track	5,765 00
New buildings	246 14
Total expenses	43,420 83

RECAPITULATION.

Gross earnings	46,578 94
Total expenses	43,420 83
Net earnings	3,158 11

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee*, , 186 .

67 *Milwaukee and St. Paul railway, eastern division.—Statement of the operation of the road for the month of March,* 1864.

EARNINGS.

From freight	$40,210 75
" passengers	22,531 61
" mails, rents, and miscellaneous	1,687 56
" use of rolling stock	1,147 42
Total earnings	65,577 34

EXPENSES.

Repairs:	
Of road	$9,937 57
bridges	41 32
fences	
buildings	786 75
locomotives	944 67
cars	2,441 20
tools and machinery	726 08
Operating:	
Management and general offices	957 75
Foreign agency and advertising	448 26
Station service	3,602 49
Stationery	634 51
Conductors, baggagemen, and brakemen	2,489 07
Train and station supplies	579 19
Engineers, firemen, and wipers	3,897 66
Oil and waste	1,660 10
Fuel	2,490 00
Damage to property	
Loss and damage of freight and baggage	202 26
Personal injuries	
Legal expenses	338 50
Car service	131 93
Miscellaneous expenses	140 21
Animals killed	30 00
Furniture	50 24
Use of rolling stock	12,321 62
Other expenses:	
Interest and exchange	
New York office expenses	40 60
Taxes—U. S. revenue	675 95
Renewal of track	13,924 73
New buildings	7,142 58
Total expenses	66,635 24

RECAPITULATION.

Gross earnings	65,577 34
Total expenses	66,635 24
Net earnings, (excess expenses)	1,057 90

DWIGHT W. KEYES, *Book-keeper.*

AUDITOR'S OFFICE, *Milwaukee,* , 186 .

68 And afterwards, on the 25th day of April, 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, Mr. Carpenter, and filed its petition for leave to amend its petition filed January 5, 1863, and that the same, when so amended, may be heard at the present term, as follows:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivors, &c., trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
and others.

To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin, in equity:

Your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, comes here into court and respectfully represents that on the 5th day of January, A. D. 1863, it
69 exhibited its petition in this court in this cause to compel Selah
Chamberlain, one of the defendants in this cause, to repay certain moneys, &c.; that, a mistake having occurred in the statements of fact in said petition, your petitioner prays leave to correct the same, by amending said petition as follows:

After the words "therein and thereby adjudged and decreed," where they occur on the fourth page of said petition, strike out down to and including the words "of said company," where they next occur, and insert instead and in place thereof, the words and figures following, viz: "Among other things, as follows:

"NEWCOMB CLEVELAND
vs.
"THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain.
In equity.

"This day came the parties, by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

"And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

"And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

"And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or, in default thereof, an execution be issued against him for the same."

70 And that the said petition, when so amended, may be heard at the present term of this court; and that your petitioner may have the benefit of said former petition.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

{ Seal of the Milwaukee and Minnesota R. R'd Company. }

MATT. H. CARPENTER,
Solicitor for the Milwaukee and Minnesota Railroad Company.

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivors, &c., trustees, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the 71 defendants in the above-entitled cause; that he has for a long time had charge, and now has charge, of the interests of said company in this cause, and makes this verification on its behalf; that he has heard read, and knows the contents of the foregoing petition, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief; and that as to those matters he believes it to be true; that the petition referred to in the foregoing petition, and filed Jan'y 5, 1862, as therein stated, was verified by this affiant; and the statement therein in regard to the decree of said district court in the said Cleveland decree, stated on information and belief, this affiant believed to be true when he so verified said petition, but that a subsequent examination of the decree has resulted in discovering that the statement of said decree in said petition, filed January 5, 1863, was erroneous.

A. FLEMING.

Subscribed and sworn to before me this 25th day of April, A. D. 1864.
A. SCOTT SLOAN, *Clerk,*
By JAMES McFARLIN, *Deputy.*

[Rev. stamp, cancelled.]

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath says that he is 72 solicitor for said Milwaukee and Minnesota Railroad Company in the above-entitled cause; that he drew the said petition filed in this court in this cause on the 5th day of January, A. D. 1863, referred to in the foregoing petition and affidavit, and that he then believed the said petition correctly stated the terms of said Cleveland decree. This affiant further says that he was solicitor for said Cleveland in said cause until the said Cleveland parted with his interest in the same; but this affiant further says that he has no recollection that he drew or saw the decree therein entered at the time it was entered, and believes he did not; but that if he did, he had entirely forgotten the contents and terms of said decree before the same became in any way material in this cause; and that when this affiant drew the said petition filed Jan'y 5, 1863, and when this affiant drew the cross-bill of the Milwaukee and Minnesota Railroad Company against said Selah Chamberlain in this cause, this affiant believed that the said Cleveland decree expressed that said lease and said judgment mentioned in said decree were fraudulent and void as to creditors; that he so stated the effect of said decree, both in this petition and in the said cross-bill; that while he was preparing the cross-bill he directed his clerk to get and attach a 73 copy of said decree to said cross-bill; but that this affiant did not at that time read the same, nor did he at any time after his retainer in this cause, about August, 1860, ever read or know the contents and terms of said decree until the 19th day of April, A. D. 1863, at which time this affiant read a copy of said decree, and discovered that it did not express, as this affiant had before supposed and believed it did, *that said lease and judgment were fraudulent and void as to creditors;* but that said decree expressed *that said lease and judgment mentioned therein were thereby absolutely annulled and vacated, so as thereafter to be of no effect whatever.*

This affiant further says that when he so drew said petition filed Jan'y 5, 1863, he did not know the terms and contents of said decree, and for that reason, and that reason only, stated said decree incorrectly, as aforesaid.

MATT. H. CARPENTER.

Subscribed and sworn to before me, 25th day of April, A. D. 1864.

A. SCOTT SLOAN, *Clerk,*
By JAMES McFARLIN, *Deputy.*

[U. S. rev. stamp, cancelled.]

And afterwards, to wit, on the 25th day of April, 1864, came the complainant, by his counsel, Mr. Ogden, and filed his motion that the final 74 decree entered in this suit be modified, as directed by the mandate of the Supreme Court of the United States, as follows:

Circuit court of the United States for the district of Wisconsin, in equity

James T. Soutter, survivor, &c.,
vs.
The La Crosse and Milwaukee Railroad Company
and others.

And now comes the complainant, by Thomas L. Ogden, his solicitor, and moves that the final decrees entered in this suit be modified as directed by the mandate of the Supreme Court of the United States, this motion being based on the said mandate.

THOMAS L. OGDEN, *Sol. for Comp't.*

And afterwards, on the 25th day of April, 1864, came the complainant, by his counsel, Mr. Ogden, and filed his motion for an order directing the receiver in this suit, Hans Crocker, esq., to pay over to the complain-75 ant, or his solicitor, all monies remaining in his hands after payment of such sums as may be due on liens on the mortgaged premises prior to the lien of the complainant, as follows:

Circuit court of the United States for the district of Wisconsin, in equity

JAMES T. SOUTTER, survivor, &c.,
ag't
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
and others.

And now comes the complainant, by Thomas L. Ogden, his solicitor, and moves the court that an order may be made directing the receiver in this suit, Hans Crocker, to pay over to the complainant, or his solicitor, all monies remaining in his hands after payment of such sums as may be due on liens on the mortgaged premises prior to the lien of the complainant.

THOMAS L. OGDEN, *Sol. for Comp't.*

76 And afterwards, on the 25th day of April, 1864, came the complainant, by his counsel, Mr. Ogden, and moved the court that the petition of the Milwaukee and Minnesota Railroad Company, filed in this suit on the 18th day of April, 1864, be stricken from the files, for reasons filed, as follows:

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
and others.

And now comes the complainant, by Thomas L. Ogden, his solicitor, and moves the court that the petition of the Milwaukee and Minnesota Railroad Company, filed in this suit on the 18th day of April, 1864, be, by order of this court, stricken from the files, for the following reasons:

First. Because the said petition raises an issue, to wit, the title of the said Milwaukee and Minnesota Railroad Company, in which this complainant has no interest. 77

Second. Because such issue cannot be raised by petition, but is the proper subject for an original proceeding, or for cross-bill.

Third. Because the said defendant, by its said petition, does not tender to the complainant the interest due on the mortgage debt, nor pay the same into court.

Fourth. Because the title claimed by the said defendant would not entitle it to the possession of the mortgaged premises, without the payment of the principal and interest due on the decree.

Fifth. Because an order calling on the receiver for his account is properly attainable by motion and not by petition.

Sixth. Because the said petition is in substance a cross-bill, though in form a petition.

Seventh. Because the said petitioner has no interest in the accounting of the receiver.

THOMAS L. OGDEN.

78 And afterwards, on the 26th day of April, 1864, came the Milwaukee and Minnesota Railroad Company, by Mr. Carpenter, its counsel, and filed its motion to vacate certain orders made in this cause, paying Selah Chamberlain and the city of Milwaukee certain sums of money, as follows:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

James T. Soutter, survivor, &c., trustee, &c.,
vs.
The La Crosse and Milwaukee Railroad Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and moves the court here to vacate the order made in this cause on the 9th day of January, A. D. 1862, ordering the receiver to pay to Selah Chamberlain the sum of $4,148 06, (four thousand one hundred and forty-eight dollars and six cents,) and
79 also to vacate the order made in this cause on the 19th day of February, 1863, ordering the receiver to pay to the city of Milwaukee $600, (six hundred dollars,) for the reason that both of said orders appear by the record to have been improvidently made, and there is no evidence of the right of the said Chamberlain or the said city to have the said several sums respectively aforesaid.

MATT. H. CARPENTER,
Sol. for said Mil. and Minn. R. R. Company.

And afterwards, on the 26th day of April, 1864, came the parties, by their counsel, and on motion of Mr. Ogden, solicitor for complainant, it is ordered by the court that it be referred to Jerome R. Brigham, esq., of the city of Milwaukee, special master, to ascertain and report the amount of interest due on the bonds specified in the bill of complaint, on the first day of March, 1864; also that said special master ascertain and report what monies the complainants have already received in this suit; also that from the receiver's reports he ascertain and report the amount now in the receiver's hand, applicable to the payment of interest, and that he report the balance
80 due as of said first day of March, and that said special master report forthwith; but ordered that this order, and the said report and action thereon, shall not preclude the right of either party to go fully into an examination of the true state of the receiver's account hereafter; the object of this order being to ascertain approximately the amount mentioned for present purposes.

And afterwards, to wit, on the 26th day of April, 1864, came Hans Crocker, esq., receiver, Selah Chamberlain, and the Milwaukee and St. Paul Railway Company, by their respective counsel, and filed their separate answers to the petition of the Milwaukee and Minnesota Railroad Company, filed during this term, as follows:

81 Circuit court United States for the 9th circuit and district of Wisconsin.

James T. Soutter, survivor, &c.,
vs.
La Crosse and Milwaukee Railroad Company and others.

District of Wisconsin, *ss:*

Hans Crocker, in answer to the petition of the Milwaukee and Minnesota Railroad Company, filed in this cause on the 18th day of April instant, and of the order to show cause granted therein on the 21st day of April instant, shows unto the honorable court that on the 18th day of of May, 1860, the district court of the United States for the district of Wisconsin, in a certain cause then pending therein, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp were complainants, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, and others, defendants, made a certain order conditionally appointing him, Hans Crocker, receiver of all that part of the La Crosse and Milwaukee railroad lying between Portage City and La Crosse, together with all the rolling stock and other property belonging to said railroad company; that on the 7th day of June said order became absolute. And afterwards, and on the same day he, said Hans Crocker, filed his bond as such receiver, which was duly approved by said court.

That afterwards, on the 7th day of June, 1860, the said district
82 court made an order in a certain other case then pending therein,
wherein Sebre Howard was plaintiff, and the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, were defendants, in the words and figures following, to wit:

83 "June 9, 1860.—This day came the parties by their counsel, and
the rule of the complainant for an injunction, and for the appointment of a receiver, having been argued on the bill, records, and affidavits submitted, on consideration whereof it is ordered by the court that an injunction be, and hereby is, allowed, according to the prayer of the bill, until the further order of this court. And this day the motion and rule of the complainant for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant, and by Mr. Emmons for the defendant, Selah Chamberlain, the defendant, the La Crosse and Milwaukee Railroad Company, not appearing. On consideration whereof it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to, or used or connected with, said line of said road, (subject nevertheless to a previous order of court appointing him, the said Hans Crocker, to be the receiver for the western portion
84 of said road from Portage City to La Crosse,) and be at once put into
possession of the same and every part and parcel thereof. And it is further ordered that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that he will duly manage and conduct said railroad and property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements, according to the rules and practice and directions of this court. And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances and other personal property which belongs, or has been procured for, or used in connection with said railroad or any part thereof, which may have come to the hands of the said defendants, or over which they have control; and that such receiver take possession thereof, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control, of all such property and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in anywise, and out of the

same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court. And it is further ordered that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required. And same day bond of said Hans Crocker, as receiver, approved and filed"

85 That on the 9th day of June, 1860, he, the said Hans Crocker, filed his bond as such receiver, under said last appointment, which was duly approved by the court.

That on the 11th day of June, 1860, the said Crocker, as such receiver, under said appointment, took possession of said railroad, rolling stock, and other property, and from thence until the 7th day of May, 1863, continued to operate said road, and from the said 7th day of May, 1863, until the 12th day of June, 1863, said road was operated jointly by said receiver and the Milwaukee and St. Paul Railway Company, under the order of said district court.

That at the time said last-mentioned appointment was made, and the taking possession of said road by him, said Crocker, as receiver, said road was in the possession of the complainants in this suit, as trustees of the mortgage described in the bill of complaint in this cause, by their agent and attorney, Prentiss Dow, who had then lately received the possession thereof from Selah Chamberlain, who was in possession and holding said road under an agreement with the said La Crosse and Milwaukee Railroad Company.

That on the 6th day of July, 1860, on the application of the complainants in this suit, an order was entered therein in the words and figures following, to wit:

86 "July 6, 1860.—This day came the complainants by their counsel, and on their motion it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said the La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to or used or connected with said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver of the western portion of said road from Portage City to La Crosse,) and be at once put into possession of the same, and every part and parcel thereof.

"And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances and other personal property which belongs or has been procured for or used in connection with said railroad or any part thereof, which may have come to the hands of the said defendants, or over which they have control; and that such receiver take possession

87 thereof, *and take possession thereof*, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all

the income to be had and received from the running, possession, and operation or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court.

"And it is further ordered that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required."

88 That at the time of said appointment said receiver was in possession of said property under his previous appointment, and that he did not take possession thereof by virtue or in pursuance of his appointment in this cause.

That afterwards, on the 8th day October, 1862, the district court, in a certain cause then and now pending therein, wherein Nathaniel S. Bouton is complainant, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, and others are defendants, made a certain other order in the words and figures following, to wit:

"This day the rule for an injunction and for the appointment of a receiver came on to be heard, and was submitted on the bill by Mr. Hooker, complainant's counsel, the defendants not appearing; whereupon it is ordered by the court that Hans Crocker, the present receiver, be, and hereby is, appointed the receiver of the La Crosse and Milwaukee Railroad Company, under this bill, with all the powers of his original appointment."

That the mortgage mentioned and described in the bill of complaint in the aforesaid cause of Bronson, Soutter, and Knapp, to foreclose which said suit was brought, was given by the said La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, and covered that part of the road-bed of said company lying between Portage City and La Crosse, 89 and all the fixtures thereon, together with the lands granted by Congress to the State of Wisconsin and by said State granted to the said La Crosse Company, and also all and singular the locomotives, engines, and other rolling stock, and all the other equipments of every kind and description which had then already been or might thereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which then had been or might thereafter be procured for or used in connection with said roads or either of them, and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said roads.

That all the rolling stock and personal property of which the said receiver took possession by virtue of his appointment had been procured for or used on and in connection with said road by the said La Crosse and Milwaukee Railroad Company.

That such proceedings were had in the said suit of Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, first above named, that a decree was rendered therein directing a sale of the mortgaged premises described in the mortgage to them; and in pursuance of said decree, said railroad from Portage City to La Crosse, together with all the rolling stock and other property of the said La Crosse and Mil- 90 waukee Company, (except that portion thereof purchased by the receiver belonging to the eastern division of said road,) was on the 25th day of April, 1863, sold by the marshal of said district to William H. White and William Wallace Pratt, which sale was afterwards, and on the 5th day of May, 1863, duly confirmed by said district court. And on the same day said purchasers, in pursuance of the statutes of the State of Wisconsin, organized the Milwaukee and St. Paul Railway Company as a corporation, and conveyed to it all the property so purchased by them at said marshal's sale.

That said Milwaukee and St. Paul Railway Company, in pursuance of said proceedings, were, by the order of said district court, made on their petition, filed in said cause, to be let into the possession of the property so as aforesaid purchased at said marshal's sale, on the said 12th day of June, 1863, let into possession and enjoyment of all the property so as aforesaid sold by said marshal, and purchased by said William H. White and William Wallace Pratt as owners, and ever since has had and now have the same in their possession and under their control as owners, which said last-mentioned order is in the word and figures following, to wit:

"June 12, 1863.—On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Company, all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

91 "And also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court."

That afterwards, and on the 12th day of June, 1863, this honorable court made an order in the said suit of Sebre Howard, complainant against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, then pending in this court, in the words and figures following, to wit:

92 "A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the court and filed in the case of Green C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Company, and others, setting forth in substance, that in pursuance of a decree of this court in that case,
93 the western division of the La Crosse and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee and St. Paul Railway Company is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Company, who is prosecuting a judgment creditors' bill, and of the Milwaukee and Minnesota Company, in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Company, require that the court should not continue further to operate, by its receiver, any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road, as required by the

original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company; and it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Company own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage:

"It is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee and St. Paul Railway Company into the possession of the eastern division of the La Crosse and Milwaukee railroad, from Portage City to Milwaukee, with the appurtenances and property, and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the said court, operate said eastern division of said railroad
94 in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And it is further ordered by the court that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities.

"And it is further ordered by the court, that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns and pay over the net revenues of said road, according to this order."

That on the said 12th day of June, 1863, this honorable court also
95 made another order in the above-named case of Nath'iel S. Bouton, complainant, against the La Crosse and Milwaukee Railroad Company,

the Milwaukee and Minnesota Railroad Company, and others, which order was in the same words and figures as the order last above recited, made in the said case of Sebre Howard.

That, in pursuance of the two orders last above named, he, the said Hans Crocker, so as aforesaid the receiver, delivered to the said Milwaukee and St. Paul Railway Company the railroad of the La Crosse and Milwaukee Railroad Company lying between the cities of Milwaukee and Portage City, together with so much of the rolling stock purchased by the receiver as belonged to that portion of said road, and the same has ever since been held, operated, and now is held and operated by said Milwaukee and St. Paul Railway Company under and in pursuance of said two orders last above named.

And this respondent further shows that he has received from the 96 Milwaukee and St. Paul Railway Company, on account of the earnings of the said eastern division of said road, the sum of sixty-eight thousand two hundred and eighty-five 50-100 dollars, which amount added to the sum of thirty-eight thousand one hundred and seventy-two 63-100 dollars, heretofore in his hands as such receiver, makes the amount of one hundred and six thousand four hundred and fifty-eight 13-100 dollars.

That from that amount is to be deducted this respondent's salary since the 11th day of June, 1860, to the present time, as receiver; that several judgments have been recorded against this respondent for his official acts in his character of receiver, which have been carried to the supreme court of 97 the State, and are most of them yet undecided; that there are unsettled accounts against him for attorney and counsel fees, and some unsettled balances due roads running in connection with said La Crosse and Milwaukee Railroad Company, and that said sums in the aggregate amount to the sum of about forty-five thousand dollars, as near as this respondent can estimate the same.

That deducting said last amount from the moneys so as aforesaid in his hands, will leave the sum of sixty-one thousand four hundred and fifty-eight dollars and thirteen cents in his hands, to be paid over to whomever this honorable court may direct

This respondent would further respectfully represent, that the sum of thirty-eight thousand dollars will become due on the first day of May next on the coupons attached to the bonds of the La Crosse and Milwaukee Railroad Company issued under the mortgage given to Francis A. Palmer, which is the first lien on the said railroad from Milwaukee to Portage City; and that the further sum of sixty thousand dollars is due on the sinking fund attached to said mortgage, and that the United States Trust Company, the trustee named therein, has notified this respondent that said sum of sixty thousand dollars must be paid, and that many of said bondholders 98 have called upon this respondent to have said payment made.

H. CROCKER,
Receiver La Crosse and Milwaukee Railroad.

District of Wisconsin, *ss:*

On this 26th day of April, A. D. 1864, personally appeared before me Hans Crocker, above named, and being by me duly sworn, did depose and say that he has heard read the foregoing answer subscribed by him and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

A. SCOTT SLOAN,
Clerk circuit c't U. S., Dis. Wis.

99 Circuit court of the United States for the 9th circuit and district of Wisconsin.

James T. Soutter, survivor, &c.,
vs.
The La Crosse and Milwaukee Railroad Company and others.

Selah Chamberlain, one of the defendants in the above-entitled cause, for answer to the petition of the Milwaukee and Minnesota Railroad Company, so called, and filed therein on the 18th day of April, 1864, respectfully shows to the court—

First. This respondent is advised and believes, and upon such advice and belief avers, that the petitioner herein is not the owner of the equity of redemption in the mortgaged premises described in the bill of complaint in this cause, and that the said petitioner has no right or title in or to the mortgaged premises as to entitle the said petitioner to the possession thereof. The respondent is further advised that the matters and things alleged in said petition, and upon which the petitioner seeks a discharge of the receiver in this cause and possession of the mortgaged premises as against this re-
100 spondent, on such as are alone cognizable upon original bill of complaint or in action of ejectment at law; and said respondent insists and submits that the said matters are not of right to be litigated and adjudicated upon in the form of proceeding instituted by the petitioner or sought to be done under said petition.

Second. The respondent further respectfully shows and represents to the court, that he is advised and believes that it does and will appear by the records and proceedings in this cause, and by the records and proceedings in a certain cause heard and determined in the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson, James F. Soutter, and Shepard Knapp were complainants and the La Crosse and Milwaukee Railroad Company, the said petitioner, this respondent, and others were defendants; which said last-mentioned suit was for the foreclosure of a first mortgage upon the western division of the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, which is ordinarily known as the land-grant mortgage; that there are important rights and claims to the rolling stock heretofore used in operating what has been
101 known as the La Crosse and Milwaukee railroad, extending from Milwaukee to La Crosse. The respondent prays leave to refer to all the records and proceedings aforesaid in connection with and as a part of this his answer; that in the said suit for the foreclosure of said land-grant mortgage a final decree was entered by the said district court on or about the 16th day of January, 1861, under which decree the mortgaged premises, as described in the mortgage and bill of complaint, were sold, under the order or direction of said court, on or about the 23d day of April, 1863, and the said sale confirmed; that thereupon the purchasers under said foreclosure sale organized a new corporation under the name of the Milwaukee and St. Paul Railway Company, and which company entered into the possession of said western division of said road; but this respondent is advised and believes that in such foreclosure suit it was not adjudicated upon or determined what proportion of the rolling stock and foreclosures of the said entire La Crosse and Milwaukee railroad would pass to the purchaser or purchasers under such sale; nor, as he is informed and believes, has such question been by any suit or proceeding determined or adjudicated upon for or against the said purchasers, or for or against the said Milwaukee and St. Paul Railway
102 Company, or for or against any of the parties to this suit; that the said Milwaukee and St. Paul Railway Company claim, in virtue of the pur-

chase and organization aforesaid, title to the whole of said rolling stock, while the said petitioner, as the respondent is informed and believes, also claims the legal title to the same in virtue of said pretended ownership; that said question of right and title to said rolling stock is open, and must necessarily be determined by litigation or answerable adjustment. And this respondent avers and submits that it would be highly prejudicial to his interests and unjust that the receiver in this cause should be discharged and possession of the property surrendered upon the claim or allegation of the petitioner herein; that, as respondent is informed and believes, the said rolling stock has, since the organization of the Milwaukee and St. Paul Railway Company, been used, in common, over the eastern and western divisions of said road, leaving open for legal adjustment the respective rights and equities of the parties therein.

Third. This respondent denies the allegation in said petition contained, to the effect that this respondent has no claim to the said railroad, rolling stock, franchises, or other things; and to the further effect, that he has asked 103 no affirmative relief in this cause, independent of the relief prayed by the complainants. This respondent's liens and incumbrances upon said mortgaged premises will particularly appear in the bill of complaint in this cause and his answer thereto and the proofs ordered by him upon the hearing, and to which he prays leave especially to refer and to make a part of this his answer; that the judgment of this respondent against the La Crosse and Milwaukee Railroad Company, the consideration of which was secured to be paid under the lease or mortgage to him, and the said lease or mortgage remain in full force and effect; that the whole amount of the said judgment is now equitably and justly due, save, perhaps, a very small portion thereof, if any, reported by the masters in this cause as having been received by respondent here, referring to said report for the particulars thereof.

This respondent did pray in his answer to the bill of complaint herein that his said claims and liens might be adjudicated upon by the court, and that he might be paid the amount thereof out of the proceeds of sale of the mortgaged premises.

Fourth. That it will appear by the report of the masters, under the order of reference in this cause, and wherein it was referred to ascertain the 104 amount thereto, this respondent upon judgment aforesaid, the said petitioners joined in said order took part in all proceedings thereunder; that, as respondent is informed and believes, the petitioner had never theretofore made any defensive allegation against respondent's judgment or lien as aforesaid, nor is there now of record any such defensive allegation in this cause, whereupon respondent submits that the petitioner cannot now be heard to allege or suggest the invalidity of respondent's claim and liens or raise any question in respect thereto and in derogation thereof.

Fifth. The respondent admits that in a certain suit, wherein Newcomb Cleveland was complainant and this respondent and others were defendants, the said district court made a decree vacating and setting aside this respondent's said judgment and mortgage, but he is advised and believes, and therefore avers, that it was not the legal tenor and effect of said decree wholly and absolutely to annul and make void to all intents and purposes, and as to all parties, the said judgment and lease or mortgage, but only as to the said Newcomb Cleveland; that said petitioner was in nowise 105 or sense a party to said suit, and cannot take advantage thereof or conclude this respondent thereby. This respondent utterly denies that the said decree has the effect and operation sought to be given thereto by the petitioner in said petition.

Sixth. This respondent, for answer, further says, that he prosecuted an appeal upon the said decree in the said Cleveland suit to the Supreme Court of

the United States, as will appear by reference to the record of the proceedings now remaining in the said district court, and to which, for such purpose, he craves leave to refer; that at the December term of 1861, of said Supreme Court, the said appeal was pending in the said court, wherein, at the same time, as this respondent is informed and believes, the said Milwaukee and Minnesota Railroad Company appeared and moved that respondent's said appeal be dismissed, for the reasons, by it alleged, that this respondent had since the decree and appeal aforesaid become the equitable owner of the judgment of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, and upon which said Cleveland suit and decree against this respondent was founded; and for the further reason that there
106 were no other parties before the said Supreme Court having any legal interest to have the said decree sustained or reversed, although the said La Crosse and Milwaukee Railroad Company was a party to the said suit, as appealed, and was a party thereto as it then remained of record in the said Supreme Court, and although the Milwaukee and Minnesota Railroad Company had, by permission of the said court to make such motion for dismissal, also become a party thereto in said court, and the said Supreme Court did, thereupon, in the proceedings upon such motion, declare in substance and effect and in favor of such motion, and grant the same, dismissing said appeal. And this respondent claims and insists, that by reason of said adjudication and judgment of said court, the said La Crosse and Milwaukee Railroad Company, as well as the said Milwaukee and Minnesota Railroad Company, are estopped from alleging or setting up that they have any interest in the said decree in the right to use the same in hostility to this respondent.

Seventh. This respondent, for answer, further says, that he is informed and believes that a sale, or form of one, took place under what is
107 known as the third mortgage of the La Crosse and Milwaukee Railroad Company, wherein William Barnes was trustee; but that the said sale took place under no decree of court, but under a naked advertisement in a newspaper, as to which respondent is advised no persons or parties were bound, save the mortgagee or mortgagees, those claiming under him or them. He is further informed that after such sale a mere paper organization was made and a corporation pretended to be formed, known as the Milwaukee and Minnesota Railroad Company, and which is the petitioner in this proceeding.

This respondent, always claiming that his claims and liens were prior in date and superior and paramount to any right or interest which the said Milwaukee and Minnesota Railroad Company could allege or urge, did not deem it necessary to put himself in antagonism with such organization or to institute any suit or proceeding to question its validity, having, as he was advised, no legal interest and consequently right so to do.

This respondent further avers, that after the said pretended organ-
108 ization of the Milwaukee and Minnesota Railroad Company, and having been no party thereto, and no interest, as he was advised, to question the same by reason of his own prior and superior incumbrances, having no other interest or motive than the collection of his own just claims and demands, he, from time to time, treated with such organization or company in various ways, but at no time yielding his claim of priority in lien; on the contrary, said organization and company has upon repeated occasions, by its corporate action, and in matters of contract, admitted and recognized the validity of respondent's said judgment and mortgage, and all subsequent to the date of said Cleveland decree—the said pretended organization not having taken place some time subsequent to said decree.

The action and proceedings of said organization or company, with reference to the liens and claims of this respondent, appear, as he is informed and believes, in the original book of minutes of the proceedings of the board of directors of said company or organization, a copy of which various resolutions, twelve in number, are hereunto annexed and numbered respectively from No. 1 to No. 12.

109 That number eight, meeting of October 20th, 1859, the president presented a form of contract (but which contract does not appear by said book of record to have been recorded,) but which does appear by said record to have been approved by the board of directors, and the president and secretary directed to execute it.

As to the contract referred to in that resolution, one of the duplicate originals is annexed to the answer of this respondent, filed February 6, 1861, in a certain cause wherein Alexander Fleming is complainant and this respondent and the Milwaukee and Minnesota Railroad Company were defendants, the whole records and proceedings wherein are now remaining of record in the said district court, and to the whole of which this respondent craves leave to refer as a part of his answer.

Eighth. This respondent, for further answer, says that the first order for a receiver in this cause was made at the behest of Sebre Howard, an alleged judgment creditor and one of the defendants to this cause, and as against this defendant, then in actual possession of the mortgaged premises. Subsequently an application for the appointment of a receiver was made
110 by the complainants in this cause, as will appear by the records and
proceedings therein whereon an order of appointment followed, and the same receiver, viz., Hans Crocker, esq., the present receiver, was appointed and qualified as such; that he took possession, and ever since has held, as receiver, the mortgaged premises and property in virtue of such appointment.

This respondent avers that in the appointment of Hans Crocker as receiver, and in awarding to him, as such receiver, the said mortgaged premises and property, the same wrested from this respondent, who had theretofore possessed and controlled the same, under and in virtue of his said lease or mortgage from the La Crosse and Milwaukee Railroad Company, and he claims that he had just right and title to the possession thereto; that there has been no adjudication or decree of this court impairing the same. He claims and insists that the records and proceedings in this cause show that the possession was so taken from this respondent; and he further claims and demands that inasmuch as his liens and claims are still unpaid and unadjusted, and the deed under which he so held possession is still in full force and effect, that if the receiver is to be discharged, the mort-
111 gaged premises shall be surrendered to him, this respondent, for the
purposes of his security, as contemplated in and by said lease or mortgage; and he further claims and insists that all parties to this suit are estopped to claim any other right of possession or surrender under the prayer of said petition.

Ninth. This respondent, for answer, further says that the Cleveland judgment mentioned by him and set up in his answer in this cause, still remains in full force and effect, and that there is now due thereon the sum of upwards of seventy-six thousand dollars besides interest, and this respondent claims and insists that the receiver in this cause should be retained on his behalf until the said judgment be paid, without prejudice to the right of respondent to claim the surrender to himself whenever said receiver may be discharged.

SELAH CHAMBERLAIN.

N. J. Emmons, *Sol'r and of Counsel.*

U. S. OF AMERICA,
District of Wisconsin, ss:

On this twenty-fifth day of April, A. D. 1864, personally came be-
112 fore me Selah Chamberlain, who, being first duly sworn, did depose and say that the foregoing answer by him subscribed is true of his own knowledge, except as to the matters therein stated on his information and belief, and that as to those matters he believes it to be true.

A. SCOTT SLOAN,
[REV. STAMP.] *Clerk circuit court, Dist. Wis.*

EXHIBIT NO. 1.

113 No. 1.—At the first meeting of the board, held the 23 May, 1859:

"Mr. Sill moved that a committee of three, of which the president should be chairman, be appointed for the purpose of arranging all matters and business between this company and Selah Chamberlain, and to report the same to this board.

"Carried unanimously.

"The president named Mr. Sill and Mr. Crocker as the other members of the committee."

No. 2.—Meeting 27th of May, 1859: "Mr. Crocker offered the following:

"*Resolved,* That the president and Mr. Gilbert, together with Messrs. Chamberlain and Goodrich, be, and they are hereby, appointed a committee to confer with a committee by and on behalf of the Milwaukee and Mississippi Railroad Company on all matters relating to through freight and passenger traffic on said roads.

"Carried."

No. 3.—Meeting June 2d, 1859:

"Mr. Emmons moved that Mr. Chamberlain be requested to change the name in advertisements, cards, and blanks from the La Crosse and Milwaukee railroad to that of the Milwaukee and Minnesota railroad, and that he make such changes as far as he can conveniently and economi-
114 cally, and that he also re-label cars Milwaukee and Minnesota railroad from time to time, when it can be done conveniently and economically."

No. 4.—Meeting 20th July, 1859:

"Mr. Smith offered the following:

"Whereas there is a number of unsettled claims for right of way along the line of the Milwaukee and Minnesota railroad between Milwaukee and La Crosse, and in some instances the claimants have commenced legal proceedings to enforce payment:

"*Resolved,* That Selah Chamberlain be authorized and requested to adjust such unsettled claims upon the best terms he can procure, and that for whatever payments he may make on such claims he may reimburse himself of the net earnings of said road prior to any application of said earnings to the payment of the indebtedness caused by his lease or mortgage from the La Crosse and Milwaukee Company dated the 26th September, 1859, and that such authority and request extend also and upon the same terms to balance due for principal or interest on purchases by the said La Crosse and Milwaukee Railroad Company of lots in or near Milwaukee, and to extend also to the necessary disbursements for fencing.

"Carried."

No. 5.—20th July, 1859, same meeting:

115 "Mr. Crocker offered the following:

"*Resolved,* That the proposition of L. J. Higby in relation to the execution and confirmation of his lease with Selah Chamberlain for a grain warehouse be referred to the executive committee, with authority to do in the premises what they may deem for the best interests of the company.

"Carried.

"The president submitted a plan for a compromise and settlement with land grant bondholders, the second mortgage bondholders in the eastern division, and with Selah Chamberlain, which was discussed by the board and generally approved, and referred back to the president with power to act in the premises subject to the approval of the board."

No. 6.—Meeting Oct 4, 1859:

"Mr. Emmons offered the following, which was adopted:

"*Resolved*, That the President be authorized to consummate, by proper contract in writing, the settlement made with Selah Chamberlain in May last, by which the amount due him, agreed on at $694,000, as of the first day of April last, of which $550,000 is to be paid in cash and the bal-
116 ance in stock of this company, the details to correspond with the verbal agreement heretofore reported by the president, and that he report such contract for ratification to the board or executive committee.

"Messrs. Smith, Sill, and Weeks were appointed to examine the accounts of Mr Chamberlain. L. W. Weeks, chairman.

No. 7.—Meeting Oct. 5, 1859:

"The monthly statements made by Mr. Chamberlain for the months of May, June, July, and August were presented and referred to the special committee."

No. 8.—Meeting Oct. 20, 1859:

"The president presented a form of contract between this company and Selah Chamberlain, in the following words, to wit, half a page blank, leaf torn out, and on page 21 the following words: 'Which was approved and the president and secretary authorized to execute the same.'"

No. 9.—Same meeting, Oct. 20, 1859:

"Whereas there are numerous suits and legal proceedings pending against this company and the officers thereof, affecting and designed
117 to affect in their results the organization of this corporation, some of which were commenced and were pending prior to the sale upon foreclosure under which this company was organized, and some of which have been since commenced; and whereas it is necessary to raise funds necessary to carry successfully this litigation consequent upon such suits and proceedings: Therefore—

"*Resolved*, That Selah Chamberlain be, and he is hereby, requested to advance from time to time such reasonable sum or sums as may be necessary to maintain and defend said suits and proceedings upon the order of the president or vice-president of this company, and that for such advances and payments he reimburse himself out of the net earnings to the railroad in his possession, and prior to any application of said net earnings to the payment of the amount his due on the indebtedness secured to him under his contract, or lease, or mortgage from the La Crosse and Milwaukee Railroad Company bearing date September 26, 1857."

No. 10.—Meeting June 19, 1860:

"Mr. Weeks moved that the contract between this company and
118 Selah Chamberlain be referred to Messrs. Emmons and Platt, with power to carry the same into effect.

"Carried."

No. 11.—Meeting 13 Feb., 1861:

"On motion of Mr. Finch, the following resolution was adopted:

"*Resolved*, That Messrs. L. W. Weeks, W. R. Sill, and A. Noxon be a committee to confer with Selah Chamberlain with a view to settlement in relation to his claim against the La Crosse and Milwaukee Railroad Company, and to report with all convenient speed."

No. 12.—Meeting Feb. 14, 1861:

"Mr. Noxon offered the following resolution, which was unanimously adopted:

"*Resolved*, That the company hereby agree to indemnify Daniel L. Wells, William E. Smith, and L. W. Weeks from all loss and damage by reason of signing an undertaking with Selah Chamberlain for an appeal from the county court of Milwaukee in a suit wherein said Chamberlain is defendant and Mrs. Mosely, administratrix, is complainant."

119 Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

DISTRICT OF WISCONSIN, *ss:*

The Milwaukee and St. Paul Railway Company, in answer to the petition of the Milwaukee and Minnesota Railroad Company, filed in this cause on the 18th day of April instant, and of the order to show cause granted therein on the 21st day of April instant, shows unto the honorable court that on the 18th day of May, 1860, the district court of the United States for the district of Wisconsin, in a certain cause then pending therein, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp were complainants, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company and others, defendants, made a certain order conditionally appointing Hans Crocker receiver of all that part of the La Crosse and Milwaukee railroad lying between Portage City and La Crosse, together with all the rolling stock and other property belonging to said railroad company; that on the 7th day of June said order became absolute, and afterwards, and on the same day, said Hans Crocker filed his bond as such receiver, which was duly approved by said court.

That afterwards, on the 7th day of June, 1860, the said district court made an order in a certain other case then pending therein, wherein Sebre
120 Howard was plaintiff, and the La Crosse and Milwaukee Railroad Company and Selah Chamberlain were defendants, in the words and figures, to wit:

121 "June 9, 1860.—This day came the parties by their counsel, and the rule of the complainant for an injunction, and for the appointment of a receiver, having been argued on the bill, records, and affidavits submitted, on consideration whereof it is ordered by the court that an injunction be, and hereby is, allowed, according to the prayer of the bill, until the further order of this court. And this day the motion and rule of the complainant for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant, and by Mr. Emmons for the defendant, Selah Chamberlain; the defendant, the La Crosse and Milwaukee Railroad Company, not appearing; on consideration whereof it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging

to the said railroad company, and belonging to or used or connected with said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver for the western portion of said road, from Portage City to La Crosse,) and be at once
122 put into possession of the same, and every part and parcel thereof.

And it is further ordered that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond with sureties, to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that he will duly manage and conduct said railroad and property; and for what he shall receive shall duly file inventories, and also file under oath every month accounts of his receipts and disbursements, according to the rules and practice and directions of this court. And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belongs or has been procured for or used in connection with said railroad, or any part thereof, which may have come to the hands of the said defendants, or over which they have control; and that such receiver take possession thereof, and take directly or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in anywise; and out of the same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining, or preserving and keeping, said railroad and other property and premises, to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court. And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just, and may be required."

123 That on the 9th day of June, 1860, the said Hans Crocker filed his bond as such receiver, under said last appointment, which was duly approved by the court.

That on the 11th day of June, 1860, said Crocker, as such receiver under said appointment, took possession of said railroad, rolling stock, and other property, and from thence until the 7th day of May, 1863, continued to operate said road; and from the said seventh day of May, 1863, until the 12th day of June, 1863, said road was operated jointly by said receiver and the Milwaukee and St. Paul Railway Company, under the order of said district court.

That at the time said last-mentioned appointment was made, and the taking possession of said road by said Crocker as receiver, said road was in the possession of the complainants in this suit, as trustees of the mortgage described in the bill of complaint in this cause by their agent and attorney, Prentiss Dow, who had then lately received the possession thereof from Selah Chamberlain, who was in possession and holding said road under an agreement with the said La Crosse and Milwaukee Railroad Company

That on the 6th day of July, 1860, on the application of the complainants in this suit, an order was entered therein in the words and figures following, to wit:

124 July 6, 1860.--This day came the complainants by their counsel, and on their motion it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said the La Crosse

and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to or used or connected with said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver of the western portion of said road from Portage City to La Crosse,) and be at once put into possession of the same, and every part and parcel thereof.

"And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belongs, or has been procured for or used in connection with said railroad, or any part thereof, which may have come to the hands of the said defendants, or over which they have control; and that such receiver take possession
thereof, *and take possession thereof*, and take directly, or by such agent
125 as may be for that purpose by such receiver duly appointed, the care,
possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation, or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining, or preserving and keeping, said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court.

"And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required."

126 That at the time of said appointment said receiver was in possession of said property under his previous appointment, and that he did not take possession thereof by virtue or in pursuance of his appointment in this cause.

That afterwards, on the 8th day of October, 1862, the said district court, in a certain cause then and now pending therein, wherein Nathaniel S. Bouton is complainant and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, and others are defendants, made a certain other order in the words and figures following, to wit:

"This day the rule for an injunction and for the appointment of a receiver came on to be heard, and was submitted on the bill by Mr. Hooker, complainant's counsel, the defendants not appearing. Whereupon it is ordered by the court that Hans Crocker, the present receiver, be, and hereby is, appointed the receiver of the La Crosse and Milwaukee Railroad Company under this bill, with all the powers of his original appointment."

That the mortgage mentioned and described in the bill of complaint in the aforesaid cause of Bronson, Soutter, and Knapp, to foreclose which said suit was brought, was given by the said La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, and covered that part of the road-bed of said company lying between Portage City and La
127 Crosse, and all the fixtures thereon, together with the lands granted
by Congress to the State of Wisconsin and by said State granted to the said La Crosse company, and also all and singular the locomotives, en-

gines, and other rolling stock, and all the other equipments of every kind and description which had then already been or might thereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which then had been or might thereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said roads.

That all the rolling stock and personal property of which the said receiver took possession by virtue of his appointment had been procured for or used on and in connection with said road by the said La Crosse and Milwaukee Railroad Company.

That such proceedings were had in the said suit of Bronson, Soutter & Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others first above named; that a decree was rendered therein directing a sale of the mortgaged premises described in the mortgage to them, and in pursuance of said decree said railroad from Portage City to La Crosse, together with all
the rolling stock and other property of the said La Crosse and Milwau-
128 kee Railroad Company, (except that portion thereof purchased by the
receiver belonging to the eastern division of said road,) was, on the 25th day of April, 1863, sold by the marshal of said district to William H. White and William Wallace Pratt, which sale was afterwards, and on the 5th day of May, 1863, duly confirmed by said district court, and on the same day said purchasers, in pursuance of the statutes of the State of Wisconsin, organized the Milwaukee and St. Paul Railway Company as a corporation, and conveyed to it all the property so purchased by them at said marshal's sale.

That said Milwaukee and St Paul Railway Company, in pursuance of said proceedings, were, by the order of said district court made on their petition, filed in said cause, to be let into the possession of the property so as aforesaid purchased at said marshal's sale on said 12th day of June, 1863, let into possession and enjoyment of all the property so as aforesaid sold by said marshal and purchased by said William H. White and William Wallace Pratt, as owners, and ever since has had, and now have, the same in their possession and under their control as owners, which said last-mentioned order is in the words and figures following, to wit:

129 "June 12, 1863.—On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree; and also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver first took the same under the order of the court."

That afterwards, and on the 12th day of June, 1863, this honorable court made an order in the said suit of Sebre Howard, complainant, against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, then pending in this court, in the words and figures following, to wit:

130 "A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Company and others, setting forth in sub-

stance that, in pursuance of a decree of this court in that case, the
131 western division of the La Crosse and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee and St. Paul Railway Company is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Company, who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Railroad Company, in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public, and of the creditors of the La Crosse and Milwaukee Railroad Company, require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road, as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company; and it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Company own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one half of the whole amount of said mortgage, it is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Company into the possession of the eastern division of the La Crosse and Milwaukee railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with said western division thereof, so that
132 one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted, as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And it is further ordered by the court that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other person as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions, of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway company shall, out of the revenues of said road, keep the said eastern division, and all the rolling stock, in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities.

"And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States, for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road, according to this order."

133 That on the said 12th day of June, 1863, this honorable court also made another order in the above-named case of Nathaniel S. Bouton, complainant, against the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company and others, which order was in the same words and figures as the order last above recited made in the said case of Sebre Howard.

That in pursuance of the two orders last above named, the said Hans Crocker, so as aforesaid receiver, delivered to said Milwaukee and St. Paul Railway Company the railroad of the La Crosse and Milwaukee Railroad Company, lying between the cities of Milwaukee and Portage City, together with so much of the rolling stock purchased by the receiver as belonged to that portion of said road, and the same has ever since been held and operated, and now is held and operated, by said Milwaukee and St. Paul Railway Company, under and in pursuance of said two orders last above named.

That Schedule A, hereto attached, is a correct statement of the tolls, income, and receipts received by said Milwaukee and St. Paul Railway Company on account of the road and property so as aforesaid transferred to them under and by virtue of the two orders last aforesaid, together with the disbursements and expenditures made by said Milwaukee and St. Paul Railway Company, and incurred on account of the same under and in pursuance of said orders, from the said 13th day of June, 1863, up to the 1st day of April instant; that all of said net proceeds have been paid over to
134 said receiver, as required by said orders, and his receipts taken therefor, and that no part thereof now remains in the hands of the Milwaukee and St Paul Railway Company or under their control, and that they have no moneys in their hands arising from the operation of the eastern division (so called,) of said railroad, except the earnings since the first day of April instant, the amount of which cannot be stated or ascertained until the end of the current month, and except a certain sum due or to become due on contracts made by the Milwaukee and St. Paul Company for the benefit and on account of the said eastern division, under and in pursuance of said order of June 12, 1863.

And the said Milwaukee and St. Paul Railway Company further shows that there is now due to the sinking fund belonging to the mortgage executed by said La Crosse and Milwaukee Railroad Company to Francis A. Palmer, (a copy of which is hereto annexed and marked B,) the sum of over sixty thousand dollars, and that the trustee therein named has demanded of the said Hans Crocker, receiver, that he pay over the amount so due thereon.

That the Milwaukee and St. Paul Railway Company are the owners of
two hundred and twenty-four of the bonds of one thousand each secured by
the mortgage described in the bill in this cause, and that the directors of
said company in their several individual right, are the owners of about six
hundred of said bonds of like amount; that the market value of said bonds
is depreciated in consequence of the failure to make good said sinking fund,
which is a redemption fund for bonds prior in lien to those secured
135 by the mortgage in the case; and the said Milwaukee and St. Paul
Railway Company, in its own behalf, and also in behalf of its individual directors, ask that said receiver may be directed to make good said sinking fund out of the moneys now in his hands; and the said Milwaukee and St. Paul Railway Company insists that the money now in the hands of the receiver should be first applied to the payment of the interest on the mortgage so as aforesaid executed by the said La Crosse and Milwaukee Company to the said Francis A. Palmer, and the making good the sinking fund for the redemption of the bonds secured thereby so as to prevent a foreclosure thereof, and next to the payment of the interest on the mortgages given to the city of Milwaukee by said La Crosse and Milwaukee Railroad Company, both of which said mortgages are prior liens to the mortgage described in this cause.

And said Milwaukee and St. Paul Railway Company further shows, that
on the 30th day of June, A. D. 1854, the La Crosse and Milwaukee Railroad
Company executed a mortgage on all that part of said road between the
cities of Milwaukee and Portage City, together with all the rolling stock
then belonging to said company or which should be subsequently acquired
by it, to Francis A. Palmer, for the sum of nine hundred and fifty thousand dollars, under which mortgage nine hundred and fifty thousand dollars of bonds
in amount, bearing interest at eight per cent per annum, were issued by
said company, of which about eight hundred and seventy-five thousand dollars are now outstanding and are a first lien upon said railroad and
136 rolling stock; that the sinking fund mortgage hereto attached is collateral to said mortgage.

That afterwards, and in the year 1854, two other mortgages were executed on account of the La Crosse and Milwaukee Railroad Company to the city of Milwaukee, amounting in the aggregate to the sum of three hundred and fourteen thousand dollars, which amount is now the second lien on the said eastern division of said road and said rolling stock.

That the mortgage so as aforesaid given to Bronson, Soutter and Knapp by the said La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, covered all that portion of said La Crosse and Milwaukee Company's road lying west of Portage City, together with the land grants, and also all of the rolling stock and franchises of said company then had or acquired or thereafter to be acquired by said La Crosse and Milwaukee Railroad Company; and that said last-mentioned mortgage was the first lien on the road-bed of said company west of Portage City and on said land grant, and the third lien upon all the rolling stock and franchises of said road.

That the mortgage to the complainants was the next incumbrance in the
order of time, and that the next incumbrance upon all the road and upon all
the rolling stock and personal property of said company was the
137 mortgage lease given by said company on the 26th day of September,
1857, to Selah Chamberlain, a copy of which is contained in the record of this cause.

That on or about the date of said mortgage lease, and in pursuance of its terms and conditions, said Selah Chamberlain entered into possession of said road and continued to hold possession thereof until about the 23d day of May, 1860, when said Chamberlain yielded the possession thereof to the complainants upon their demand under the provisions of their mortgage, but with the understanding that the possession thereof was to come back to him whenever the complainant's right to hold the same under this said mortgage should cease and determine; that as this respondent is informed and believes, said Chamberlain's right under his said mortgage lease is still in full force, and that he is entitled to claim and does claim the possession of said road between Milwaukee and Portage City so soon as the receiver shall be discharged therefrom.

And the said Milwaukee and St. Paul Railway Company, further answering, deny that they have used any portion of the revenues of the said eastern division of said railroad or converted them te their use.

138 That this company has no knowledge as to whether the proceedings by which the said Milwaukee and Minnesota Railroad Company claim to have acquired the equity of redemption to the eastern division of the La Crosse and Milwaukee Railroad, are valid and legal, but it is informed and believes that those proceedings were fraudulent and of no validity whatever, and that it will so appear whenever the same is judicially investigated, and consequently that they are not entitled to the possession of said eastern division even as against the said La Crosse and Milwaukee Railroad Company.

And the said Milwaukee and St. Paul Railway Company further shows that, as it is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp as aforesaid, is a mortgage of the entire franchise, to use, operate, manage, and control said La Crosse and Milwaukee Railroad for its entire length, from the city of Milwaukee to the city of La Crosse, and that said mortgage is prior and superior to all claims, liens, and incumbrances on said eastern division, except the mortgage to said Francis A. Palmer and the mortgages to the city of Milwaukee.

139 That by the foreclosure of the said mortgage to Bronson, Soutter, and Knapp, the sale and confirmation under said decree, the conveyance of the marshal to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization, Milwaukee and St. Paul Railway Company by said purchasers, under and by virtue of the provisions of chapter seventy-nine of the Revised Statutes of Wisconsin, concerning railroads, and the conveyances by said purchasers to it of all and singular the said mortgaged premises, the said Milwaukee and St. Paul Railway Company has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railway Company, in running, operating, and controlling said railroad in its entire length, from the city of Milwaukee to the city of La Crosse, as one entire railroad, and to receive the revenue, tolls, and income therefrom, and out of such revenue, tolls, and income to pay all necessary operating expenses, and after paying such operating expenses to pay over to the parties holding the property entered in said eastern division and entitled thereto the net proceeds arising therefrom.

Milwaukee and St. Paul Railway Company by—

D. M. HUGHES, *Pres't.*

CARY & PRATT, *Solicitors.*

[Seal Milwaukee and St. Paul Railway Company.]

140 DISTRICT OF WISCONSIN, *ss:*

On this 26th day of April, A. D. 1864, personally appeared before me

David M. Hughes, above named, and made oath that he is the president of the Milwaukee and St. Paul Railway Company; that he has heard read the foregoing answer, and subscribed by said Milwaukee and St. Paul Railway Company by him as president, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. Wis.

141 A.

Milwaukee and St. Paul Railway Company, in account with Hans Crocker, receiver:

Dr. To gross earnings of the eastern division of the La Crosse and Milwaukee railroad from June 13, 1863, to April 1, 1864		$688, 665 86
Cr. By operating expenses, including use of rolling stock of M. & St. P. Co.		452, 451 05
Net earnings		236, 214 81
To amount due from receiver to St. Paul Co. for moneys received by him for operation of western division, from April 25, 1863, to June 13, 1863, and for back charges paid for receiver	$41, 675 32	
To material purchased for eastern division	28, 620 63	
" paid for rolling iron rails	60, 000 00	
" 200 tons of rails purchased	23, 000 00	
" State taxes	14, 633 66	
		167, 929 61
		68, 285 20

142 *La Crosse and Milw. Railroad Co. to Francis A. Palmer, trustee, and United States Trust Company.—Collateral mortgage.*

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county, and State of New York, party of the second part. Whereas the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage, covering all the real and personal property and estate appertaining to the eastern line or section of their road, extending from the city of Milwaukee to Portage City, and being about ninety-five miles in length, which mortgage bears date on the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the same counties through which said road runs, the same having been made to the party of the second part in trust, to secure the payment of the principal and interest of certain first mortgage eight per cent. coupon bonds of the said company of the denominations of one thousand dollars and five hundred dollars, bearing date the first day of November, A. D. one thousand eight hundred and seventy-four respectively, with the interest thereon from date, at the rate of eight per cent. per annum, payable half yearly thereafter, which bonds amount in the aggregate to nine hundred and fifty thousand

dollars, and which the said company, by virtue of the said mortgage, contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their said eastern line or section of road from the city of Milwaukee to Portage City, as by reference to the said mortgage or the record thereof more fully and at large appear; and whereas the said company have heretofore issued and sold a portion of the said bonds thus secured, amounting to four hundred
143 and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from number one to number sixty-four inclusive, number seventy to number ninety inclusive, number ninety-six to number one hundred and one inclusive, and number one hundred and fifty-one to number three hundred inclusive, and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from number one to number four hundred and twenty inclusive, and have built and equipped about sixty-one miles of the said eastern line or section of their road, leaving on hand and in their possession unsold, the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, and which the company contemplate to sell and negotiate for the purpose of raising means to aid in finishing the remainder of their said eastern section or line of road; and whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have by a resolution by this board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net earnings of the road, and depositing with the United States Trust Company of the city of New York for the next nineteen years the sum of twelve thousand dollars, which principal sum, together with all accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, as aforesaid, and
143½ four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, as aforesaid, on or before the maturity thereof:

Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions, and agreements contained in the aforesaid indenture of mortgage heretofore executed and delivered as aforesaid, and as supplementary thereto for the considerations aforesaid, and for and in consideration of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have covenanted, promised, and agreed, and hereby do covenant, promise, and agree, to and with the said party of the second part, his successor and successors in the trust hereby created, and assigns, that for the

further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, and amounting in the aggregate to five hundred thousand dollars, they will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriate from the net earnings of the said road for the preceding twelve months, and deposit with the United States Trust Company, of New York, (an incorporated institution located and doing business in the city of New York,) or its successor, which said United States Trust Company, or its successor, is hereby made, constituted, and appointed the trustee or receiver of the parties hereto, and of all the holders of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the afore-
144 said mortgage, on or before the maturity of the said last-mentioned
bonds; the first setting apart and appropriating of said sinking fund to be made and deposited on the first day of November, A. D. one thousand eight hundred and fifty-six, and the sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company, or its successors, in the purchase of the residue of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are of the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to nine hundred inclusive, issued under the aforesaid mortgage, whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same, at the date of the purchase. In case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then, and in that case, the United States Trust Company, or its successor, shall, from time to time, invest the said funds, under the advice and direction of the board of directors of the party of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part, provided, however, that the obligations of the parties of the first part, to make such annual deposits to the said sinking fund as aforesaid, shall cease and determine so soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulations of interest thereon, form a capital sufficient to pay and discharge at the maturity thereof all the outstanding unconnected bonds, numbered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successors,

shall at all times keep a proper and correct registry and account of the said several securities and sums to be held by them as aforesaid and belonging to the said sinking fund, for the inspection and examination of the parties hereto, and of any of the stockholders or bondholders of the road, and shall annually hereafter, during the continuance of the said trust, render 145 to the parties hereto a written statement, showing the true state and condition of the said sinking fund; and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall as purchased be cut, cancelled, and retained by the said United States Trust Company, or its successors, and be held and returned by them at the expiration of their trust.

The interest coupons on said purchased bonds are, however, to be regularly paid to the United States Trust Company, or its successor, by the parties of the first part in the same manner as if held and owned by a third party for value; and in case of the resignation of the said United States Trust Company as such trustee or receiver, or of its successor or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time appoint and substitute as a new trustee or receiver any other incorporated institution located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose; and said new trustee or receiver, or the successor thereof, shall be vested with all the right, estate, powers, and privileges hereby conveyed to or vested in the United States Trust Company. And the said United States Trust Company, or its successor, shall, upon request, forthwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property, and securities belonging to the said sinking fund so deposited with and held by them as aforesaid. The said United States Trust Company, or its successor, shall apply the funds and available securities in their hands to the payment and redemption of the said mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from No. 65 to No. 69, inclusive; from No 91 to No. 95, inclusive; from No. 101 to No. 150, inclusive; and from No. 301 to 560, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900, inclusive; at their maturity rendering the overplus, if any, to the parties of the first part or their assigns. And in case the parties of the first part shall fail, neglect, or refuse to set apart, appropriate, and deposit with the United States Trust Company, or its successor, the said several sums of money, or any or either of them, for the purpose of a sinking fund, at the times and in the manner hereinbefore particularly set forth and provided, then at the expiration of sixty days from and after such de- 146 fault, failure, neglect, or refusal, in case such payment and appropriation to the sinking fund shall not have been made upon the request of the holder of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from No. 91 to No. 95, inclusive; from No 101 to No. 150, inclusive; and from No. 301 to No. 500, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to 900, inclusive, or upon the request of the said United States Trust Company, or its successor, the said party of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon, and take possession of all or any part of said premises, real and personal estate and property, and as the attorney in fact or the agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid. And the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one half of the said residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid, or unconverted into stock, and not purchased and deposited for the sinking fund as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days' previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights, and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim of, in, or to said premises, real and personal estate and property, right, and franchises, or any part thereof. The amount of the bids or purchase-money on the said sale may be paid and satisfied in whole or 147 in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund, as compared to the amount of outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds, numbered as last aforesaid, issued under the said mortgage and not converted nor purchased for the sinking fund, nor used in payment of such bid as aforesaid, and shall pay over and restore the remainder of said proceeds to parties of the first part, their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first hereby covenant for the considerations aforesaid to execute and deliver any further reasonable or necessary conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests, or property subsequently to the date hereof acquired by said parties of the first part, and comprehended or intended to be in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and transportation of iron rails and machinery, and for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rails and machinery, so purchased, shall be transported 148 and used with due diligence in the construction, finishing, and furnishing said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in the manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors, in the trust hereby created, or assigned, shall be void, and when the principal and interest of all the residue of the said mortgage bonds, issued under the said mortgage, shall be fully paid, and the residue of said bonds, numbered as last aforesaid, duly cancelled, the said party of the second, his successor or successors, or the trust hereby created, or assigns, shall, upon the request of the parties of the first part, or their assigns, duly execute and acknowledge the payment and satisfaction of this agreement, and shall deliver up the same to the parties of the first part, or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, it shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control, and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, when such agent or attorney is selected with reasonable discretion; and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust in case he or they shall be compelled to take possession of the said premises and real and personal property and estate, or any part thereof, or to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and contract in the premises shall be divested, cease, and determine, and the said parties of the first part shall, or in their default to take proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage, may apply to the supreme court of the State of Wisconsin, to appoint in his place a new trustee, being resident of the city of New York, and thereupon and upon his acceptance of the trust, such new trustee shall become vested, for the purposes aforesaid, with all the rights, estate, property, and interest hereby conveyed 149 to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements, or conveyances for that purpose, to the end that the true interest, object, and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereto caused to be affixed their corporate seal, and these presents to be signed by their president and countersigned by their secretary, at Milwaukee, Wisconsin, and the said party of the second part has also hereunto set his hand and seal.

150 BYRON KILBOURN,
[CORPORATE SEAL.] *Pres. of La Crosse and Milwaukee Railroad Co.*
F. A. PALMER, *Trustee.* [SEAL.]
Attest : LEVI BURNELL, *Sec'y.*

and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid. And the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one half of the said residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid, or unconverted into stock, and not purchased and deposited for the sinking fund as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days' previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights, and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim of, in, or to said premises, real and personal estate and property, right, and franchises, or any part thereof. The amount of the bids or purchase-money on the said sale may be paid and satisfied in whole or
147 in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund, as compared to the amount of outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds, numbered as last aforesaid, issued under the said mortgage and not converted nor purchased for the sinking fund, nor used in payment of such bid as aforesaid, and shall pay over and restore the remainder of said proceeds to parties of the first part, their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first hereby covenant for the considerations aforesaid to execute and deliver any further reasonable or necessary conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests, or property subsequently to the date hereof acquired by said parties of the first part, and comprehended or intended to be in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and

transportation of iron rails and machinery, and for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rails and machinery, so purchased, shall be transported
148 and used with due diligence in the construction, finishing, and furnishing said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in the manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors, in the trust hereby created, or assigned, shall be void, and when the principal and interest of all the residue of the said mortgage bonds, issued under the said mortgage, shall be fully paid, and the residue of said bonds, numbered as last aforesaid, duly cancelled, the said party of the second, his successor or successors, or the trust hereby created, or assigns, shall, upon the request of the parties of the first part, or their assigns, duly execute and acknowledge the payment and satisfaction of this agreement, and shall deliver up the same to the parties of the first part, or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, it shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control, and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, when such agent or attorney is selected with reasonable discretion; and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust in case he or they shall be compelled to take possession of the said premises and real and personal property and estate, or any part thereof, or to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and contract in the premises shall be divested, cease, and determine, and the said parties of the first part shall, or in their default to take proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage, may apply to the supreme court of the State of Wisconsin, to appoint in his place a new trustee, being resident of the city of New York, and thereupon and upon his acceptance of the trust, such new trustee shall become vested, for the purposes aforesaid, with all the rights, estate, property, and interest hereby conveyed
149 to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements, or conveyances for that purpose, to the end that the true interest, object, and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereto caused to be affixed their corporate seal, and these presents to be signed by their president and countersigned by their secretary, at Milwaukee, Wisconsin, and the said party of the second part has also hereunto set his hand and seal.

150 BYRON KILBOURN,
[CORPORATE SEAL.] *Pres. of La Crosse and Milwaukee Railroad Co.*
F. A. PALMER, *Trustee.* [SEAL.]
Attest: LEVI BURNELL, *Sec'y.*

The words "numbered as last aforesaid" interlined between 11 and 12th lines of 5th page before execution, in presence of—
NELSON MCNEAL.
CHARLES E. JENKINS.

Witnesses to signature of F. A. Palmer, trustee—
W. A. WOODWARD.
JOHN J. HILL.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On this 18th day of February, 1856, came before me one Byron Kilbourn, president of La Crosse and Milwaukee Railroad Company, and Levi Burnell, secretary of said company, to me personally known, and severally acknowledged that they executed the foregoing conveyance or written instrument, for the uses and purposes therein expressed.

CHARLES E. JENKINS,
County judge, Milwaukee Co., Wis.

STATE OF WISCONSIN,
County Court, Milwaukee County, ss:

I, Matthew Keenan, clerk of said court, do hereby certify that the Hon. Charles E. Jenkins, whose name appears above, and before whom the foregoing acknowledgment was made, was at the date thereof and now
151 is acting judge of the county court aforesaid, duly elected and qualified, and further that I am well acquainted with the handwriting of said judge and verily believe the signature purporting to be his is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 18th day of February, A. D. 1856.

[SEAL OF COURT.] MATTHEW KEENAN, *Clerk.*

NEW YORK CITY, COUNTY AND STATE, *ss:*

On this 29th of February, 1856, before the undersigned, a commissioner in and for the said State, residing in the city of New York, appointed by the governor of the State of Wisconsin under the laws of said State, with full power and authority to take the acknowledgment and proof of deeds, and to be used or recorded in said State of Wisconsin, appeared Francis A. Palmer, known to me to be the person named in the foregoing indenture, and acknowledged that he executed the same freely as his act and deed, as trustee, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[OFF'L SEAL.] W. A. WOODWARD,
Commissioner for Wisconsin, in New York.

152 Recorded March 17, 1856, at 8 o'clock a. m., in vol. 32 of Mortgages, on pages 495, 496, 497, 498, 499, 500, 501, and 502.

STATE OF WISCONSIN, *Milwaukee County:*

REGISTER'S OFFICE.

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the foregoing instrument recorded in volume 32 of Mortgages, on pages 495 to 502, and has been by me carefully compared with the said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this 25th day of April, A. D. 1864.

F. BAGGELER,
Register of Milwaukee County, Wisconsin.

(5 cent revenue stamp, cancelled.)

153 And afterwards, on the 26th day of April, 1864, came the parties, by their counsel, and the several petitions and motions made on the

part of the Milwaukee and Minnesota Railroad Company filed this term, came on to be heard and were argued by counsel, and the argument not being concluded, the same was adjourned till to-morrow morning.

And afterwards, on the 27th day of April, 1864, came the parties, by their counsel, and the argument of the several petitions and motions made on the part of the Milwaukee and Minnesota Railroad Company filed this term was resumed, and the same being concluded, the court took the same under advisement.

And afterwards, on the 27th day of April, 1864, came the special master, Mr. Brigham, and filed his report, as follows:

Masters' report.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

To the court:

154 I, Jerome R. Brigham, appointed a special master in the above-entitled cause by an order entered on the 26th day of April, A. D. 1864, and to whom it was referred by said order to ascertain and report certain matters and things therein stated, do respectfully certify and report that I have computed the amount of the interest due on the bonds specified in the bill of complaint in this cause, on the 1st day of March, A. D 1864, and I find the same to be the sum of $400,000 00, being interest from March 1st, 1859, on $1,000,000, at the rate of 8 per cent. per annum.

I do further report that upon an examination of the records and proceedings in this cause, and especially the report of the masters which was filed October 7th, A. D. 1861, and the amended report of the masters filed November 6, A. D. 1861, I ascertain the amount of the net revenues of said road recorded by the complainants by their agent, Prentice Dow, esquire, to be the sum of $34,739 95.

I do further report that from the report of the receiver filed herein April 26, 1864, I ascertain that the whole amount of the net revenues of the property covered by the mortgage mentioned in the bill of complaint herein which have come into the hands of the receiver are the sum of $106,458 13.

There are certain claims in judgment against said receiver in causes
155 now in the supreme court of the State on appeals and not decided, and also sundry unsettled accounts and claims against said receiver which he estimates to amount to the sum of $45,000

The receiver's report also states that there will become due on the 1st day of May next, for interest on a mortgage which is prior to the mortgage of the complainants, the sum of $38,000.

And there *there* is also due on the sinking fund attached to said prior mortgage the sum of $60,000.

I do further report that the balance of interest due on the bonds mentioned in the complaint herein on the first day of March 1, 1864, is $365,260 05,

being interest on $1,000,000 at 8 per cent. from March, 1859.	$400,000 00
Less net revennes in hands of the complainants, by their agent, Prentice Dow	34,739 95
	365,260 05

All of which is respectfully submitted.
Dated April 26, 1864.

JEROME R. BRIGHAM,
Special master.

156 And afterwards, on the 27th day of April, 1864, came the receiver, and filed his report for the month of March, 1864, as follows :

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. *et als.*

To the hon. the judges of the circuit court of the United States of America for the district of Wisconsin :

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1864.

H. CROCKER, *Rec.*

Balance cash on hand Feb'y 29, 1864,		$49,203 27
Disbursements :		
Sundry bills and accounts for supplies	$206 65	
Foreign ticket balances	14 59	
Freight earnings refunded	201 81	
Incumbrances E. D., city taxes	1,068 85	
Right of way, eastern div'n	216 25	
First mortgage coupons	58 49	
Milw. City do	9,314 74	
Bal. cash on hand	38,121 89	
		49,203 27

STATE OF WISCONSIN, *Milwaukee County, ss :*

Hans Crocker, being duly sworn deposes and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of March, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 16th day of April, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

157 And afterwards, on the 28th day of April, 1864, ordered by the court that the order of the 12th June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road, be, and the same is hereby, rescinded, and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances, and rolling stock received under said order, and all property relating to said eastern division.

Dismissal of petition, &c.—Mil. & Minn. R. R. Co.

And afterwards, on the 28th day of April, 1864, the judges being divided in opinion as to the several petitions and motions on the part of the Milwaukee and Minnesota Railroad Company filed this term, being the term commencing the third Monday in April, 1864, begun and holden in the city of Milwaukee, district of Wisconsin, the same are dismissed.

Order on receiver for continuous statement—reference to Palmer.

And afterwards, and on the same day, ordered by the court that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th day of June, 1863, by the 1st day of June next,
158 and that any person interested may examine the same and file exceptions thereto, and that H. L. Palmer, esq., be and is appointed an auditor to report on the same to the next term of this court.

And afterwards, on the 19th day of May, 1864, came Hans Crocker, and filed his report, as receiver in this cause, for the month of April, 1864, as follows:

159 U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
LA CROSSE AND MILWAUKEE RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of April, 1864.

H. CROCKER, *Rec.*

Balance cash on hand March 31, 1864		$38,121 89
Receipts:		
U. S. government military transportation		146 24
Milw. and St. Paul Railway Co		68,285 50
Disbursements:		
Wesley Kinny, judgment for damages	2,048 92	
Freight earnings refunded	289 31	
Right of way, east. division	80 00	
Milw. City bond coupons	187 66	
Balance cash on hand April 30, 1864	103,947 74	
	106,553 63	106,553 63

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the fore-
160 going is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of May, A. D. 1864.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

And afterwards, on the first day of June, 1864, came Hans Crocker, the receiver herein, and filed his report of receipts and disbursements from June 11, 1860, to May 31, 1864, as follows:

161 Circuit court of the United States for the district of Wisconsin.

James T. Soutter, surviving trustee,
vs.
The La Crosse and Milwaukee Railroad Co. *et als.*

To the hon. the judges of said court:

In pursuance of an order of this court, bearing date April 28th, 1864, I herewith submit a report of the moneys received and expended by me as receiver from the 11th day of June, 1860, to the 31st day of May, 1864, except the earnings of the month of May, 1864, which cannot be ascertained till about the 20th of the month. Vouchers for all expenditures will be found in my office, to which I beg leave to refer.

Respectfully,

H. CROCKER, *Rec.*

Milwaukee, *June* 1, 1864.

162 *Statement of receipts and disbursements by H. Crocker, receiver of the La Crosse and Milwaukee railroad, from June* 11, 1860, *to May* 31*st*, 1864, *both inclusive.*

	Receipts.	Disbursements.
Month of June, 1860	$31,071 24	$27,952 92
July, 1860	54,008 08	63,331 89
August, 1860	61,711 43	53,234 15
September, 1860	126,324 87	98,754 12
October, 1860	188,716 13	142,186 53
November, 1860	145,870 14	117,355 78
December, 1860	67,160 39	74,601 55
	674,862 28	577,416 94
Month of January, 1861	$64,243 68	$53,035 73
February, 1861	50,255 63	54,180 63
March, 1861	65,018 24	103,161 15
April, 1861	91,189 61	106,204 52
May, 1861	137,944 70	86,891 47
June, 1861	139,492 50	108,519 07
July, 1861	118,692 63	164,620 72
August, 1861	94,785 55	166,674 03
September, 1861	129,939 43	133,124 81
October, 1861	208,817 29	148,456 59
November, 1861	159,324 58	174,191 89
December, 1861	109,545 05	107,987 76
	1,369,248 89	1,407,048 37
Month of January, 1862	$50,080 06	$78,092 26
February, 1862	57,774 39	62,882 97
163 March, 1862	53,836 61	72,472 45
April, 1862	62,589 96	76,092 36
May, 1862	167,417 77	126,926 90
June, 1862	168,035 42	143,423 64
July, 1862	142,989 99	158,981 54
August, 1862	92,673 24	117,114 02

September, 1862	$170,788 30	$119,407 13
October, 1862	200,408 47	146,965 64
November, 1862	165,021 64	149,230 81
December, 1862	147,361 19	146,781 89
	1,478,977 04	1,398,371 61
Forward total	3,523,088 21	3,382,836 92

	Receipts.	Disbursements
Month of January, 1863	$60,237 09	$45,965 42
February, 1863	79,644 85	84,628 01
March, 1863	72,486 01	106,440 49
April, 1863	111,379 96	105,575 91
May, 1863	185,432 85	126,614 19
June, 1863	127,768 86	169,908 15
July, 1863	4,964 52	38,130 24
August, 1863	13,906 47	6,996 84
September, 1863	2,342 72	26,720 92
October, 1863	1,090 12	4,171 68
November, 1863	156 35	32,278 05
December, 1863	4,330 02	2,804 74
	663,739 82	750,234 64
Month of January, 1864		$2,348 00
February, 1864	$97 43	2,302 63
March, 1864		11,081 38
164 April, 1864	68,431 74	2,605 89
May, 1864	464 32	34,294 98
	68,993 49	52,632 88
Totals brought forward June 11, 1860, 1861, 1862	$3,523,088 21	$3,382,836 92
Totals brought forward 1863	663,739 82	750,234 64
Totals brought forward 1864 to May 31	68,993 49	52,632 88
Bal. on hand May 31, 1864		70,117 08
	4,255,821 52	4,255,821 52

June 11th to 30th, 1860.

Receipts :		
Freight	$19,448 70	
Passengers and foreign tickets	10,564 87	
Express and miscellaneous	1,057 67	
Disbursements :		
Advanced charges		$6,286 40
Bill of supplies		3,248 13

Foreign ticket balances		$4,528 88
Right of way, E. Div		25 00
Incumbrances, depot grounds, E. Div		820 09
Machanic's liens, W. Div		300 00
Pay-rolls month of May		12,223 64
Pay-rolls month of June		520 78
	$31,071 24	27,952 92

165 JULY, 1860.

Receipts :		
Freight	$25,189 79	
Passengers and foreign tickets	27,367 15	
Mails	496 53	
Miscellaneous	954 64	
Disbursements :		
Advanced charges		$7,799 56
Bills of supplies		11,862 15
Pay-rolls for July		21,551 30
Foreign ticket balances		8,088 70
Incumbrances on real estate, W. D		1,500 00
Incumbrances on real estate, E. D		2,180 18
Right of way, W. D		350 00
Rolling stock		10,000 00
	54,008 08	63,331 89

AUGUST, 1860.

Receipts :		
Freights	$25,024 09	
Passengers and foreign tickets	27,466 11	
Mails	8,093 54	
Express and miscellaneous	1,127 69	
Disbursements :		
Pay-rolls for July		$19,326 00
Bills of supplies		8,046 00
Foreign ticket balances		12,597 44
Advanced charges		8,550 96
Incumbrances on real estate, E. D		3,000 00
Incumbrances on real estate, W. D		508 66
Right of way, E. D		430 00
166 Right of way, W. D		775 09
	61,711 43	53,234 15

SEPTEMBER, 1860.

Receipts :		
Freight	$92,483 35	
Passengers and foreign tickets	33,012 48	
Express and miscellaneous	829 04	

1871

Disbursements :

Pay-rolls		$30,966 81
Bills of supplies		19,339 90
Foreign ticket balances		6,738 75
Advanced charges		25,425 93
Incumbrances on real estate, E D		2,958 72
Incumbrances on real estate, W. D		140 00
Right of way, E. D		425 00
Right of way, W. D		4,583 08
Rolling stock		8,175 93
	$126,324 87	98,754 12

OCTOBER, 1860.

Receipts :

Freights	$150,005 42	
Passengers and foreign tickets	38,065 42	
Express and miscellaneous	645 29	

Disbursements :

Pay-rolls for September		$23,000 00
Bills of supplies		21,729 97
Foreign ticket balances		12,828 86
Advanced charges		37,076 73
167 Incumbrances real estate, E. D		13,116 29
Incumbrances real estate, W. D		160 00
Right of way, E. D		176 50
Right of way, W. D		464 25
Rolling stock		18,387 53
Taxes		157 00
Int. coupons, 1st mortgage bonds		15,089 40
	188,716 13	142,186 53

NOVEMBER, 1860.

Receipts :

Freight	$108,748 16	
Passengers and foreign tickets	36,119 98	
Express and miscellaneous	1,002 00	

Disbursements :

Pay-rolls for October		$26,167 25
Bills of supplies		25,291 85
Foreign ticket balances		9,459 16
Advanced charges		16,981 67
Incumbrances on real estate, E. D		8,749 53
Incumbrances on real estate, W. D		300 00
Right of way, E. D		14 50
Right of way, W. D		1,920 00
Rolling stock		9,381 59
Taxes		69 54
Miscellaneous		1,560 99
First mortgage bond coupons		17,459 70
	145,870 14	117,355 78

168 DECEMBER, 1860.

Receipts :		
Freight	$34,607 83	
Passengers and foreign tickets	25,084 38	
U. S. mails	6,102 00	
Express and miscellaneous	13,066 18	
Disbursements :		
Pay-rolls for Nov		$22,605 05
Bills of supplies		13,592 77
Foreign ticket balances		6,620 21
Advanced charges		9,903 35
Incumbrances, E. D		1,181 92
Incumbrances, W. D		300 00
Right of way, E. D		235 00
Right of way, W. D		1,145 00
Rolling stock		14,564 17
First mortgage bond coupons		1,830 60
Miscellaneous expenses		2,623 48
	67,160 39	74,601 55

JANUARY, 1861.

Receipts :		
Freight	$46,749 29	
Passengers and foreign tickets	16,772 52	
U. S. mails	47 68	
Express and miscellaneous	674 19	
Disbursements :		
Pay-rolls for Dec., 1860		$18,464 25
Bills of supplies		12,301 18
Foreign ticket balances		11,299 38
169 Advanced charges		2,941 67
Incumbrances on real estate, E. D		2,695 09
Right of way, E. D		783 10
Right of way, W. D		195 00
First mortgage bonds coupons		375 60
Milwaukee City bonds coupons		3,980 46
	64,243 68	53,035 73

FEBRUARY, 1861.

Receipts :		
Freight	$34,748 36	
Passengers and foreign tickets	14,291 35	
Express and miscellaneous	1,215 92	
Disbursements :		
Pay-rolls for January		$19,631 20
Bills of supplies		12,288 68
Foreign ticket balances		3,398 36
Advanced charges		4,875 96
Right of way, E. D		735 00
Right of way, W. D		438 04

La Crosse depot extension, W. D		$645 81
Fencing		80 00
State tax		7,564 76
Legal expenses		1,094 91
Rolling stock		3,427 91
	$50,255 63	54,180 63

170 MARCH, 1861.

Receipts :		
Freight	$42,278 64	
Passengers and foreign tickets	18,311 85	
U. S. mails	3,095 41	
Express and miscellaneous	1,332 34	
Disbursements :		
Pay-rolls for Feb		$20,674 45
Bills of supplies		17,649 90
Foreign ticket balances		5,783 41
Advanced charges		6,845 49
Right of way, E. D		166 86
Right of way, W. D		438 24
La Crosse elevator		3,711 83
Fencing		1,170 54
Dis. and commissions		542 03
First mortgage bond coupons		33,586 40
Milwaukee City bond coupons		12,592 00
	65,018 24	103,161 15

APRIL, 1861.

Receipts :		
Freights	$65,740 66	
Passengers and foreign tickets	23,495 07	
U. S. mails	827 15	
Express and miscellaneous	1,126 73	
Disbursements :		
Pay-rolls for March		$22,387 96
Bills of supplies		20,733 54
Foreign ticket balances		3,446 59
171 Advanced charges		26,117 69
Incumbrances real estate, E. D		9 19
Right of way, E. D		90 00
Right of way, W. D		16 50
La Crosse elevator		1,818 24
Fencing		400 00
Cleveland judgment		28,801 92
Dis. and commissions		75 01
First mortgage bond coupons		525 60
Milwaukee City bond coupons		1,782 28
	91,189 61	106,204 52

May, 1861.

Receipts :		
Freight	$112,711 56	
Passengers and foreign tickets	23,750 44	
U. S. mails	887 87	
Express and miscellaneous	594 83	
Disbursements :		
Pay-rolls for April		$24,392 00
Bills of supplies		26,505 04
Foreign ticket balances		3,129 12
Advanced charges		19,231 09
Incumbrances on real estate, E. D		825 30
Right of way, E. D		408 00
Right of way, W. D		165 00
La Crosse elevator		414 23
Fencing		525 00
Int. on land grant mortgage		2,500 00
172 Int. on land grant mortgage		2,500 00
L. Ward, receiver of Horicon R. R		295 12
First mortgage bonds coupons		4,616 20
Milwaukee City bonds coupons		1,255 97
Dis. and commission		129 40
	137,944 70	86,891 47

June, 1861.

Receipts :		
Freights	$102,957 17	
Passengers and foreign tickets	32,079 65	
Express and miscellaneous	4,455 68	
Disbursements :		
Pay-rolls for May		$30,470 00
Bills of supplies		38,546 79
Foreign ticket balances		6,518 48
Advanced charges		21,788 10
Right of way, E. D		1,542 00
Right of way, W. D		100 00
La Crosse elevator		361 46
Fencing		1,933 90
Legal expenses		26 94
Cattle killed during Chamberlain's admin		700 00
Dis. and commission		1,000 55
First mortgage bonds coupons		2,465 60
Milwaukee City bonds coupons		3,065 25
	139,492 50	108,519 07

173 July, 1861.

Receipts:		
Freights	$88, 319 18	
Passengers and foreign tickets	27, 220 11	
Express and miscellaneous	3, 153 34	

1815.

Disbursements:		
Pay-rolls for June		$32, 228 25
Bills of supplies		26, 605 62
Advanced charges and foreign tickets		37, 620 42
Right of way, E. D.		135 00
Fencing		859 44
Cleveland judgment		30, 000 00
Land grant mortgage		20, 000 00
L. Ward, receiver, ac.		4, 953 02
Rolling stock		4, 750 00
Exchange ac		832 89
Milwaukee City bond coupon		4, 079 07
First mortgage "		2, 429 81
Real estate "		127 20
	$118, 692 63	164, 620 72

August, 1861.

Receipts:		
Freights	$65, 835 33	
Passengers and foreign tickets	22, 699 44	
U. S. mails	4, 739 03	
Express and miscellaneous	1, 511 75	
Disbursements:		
Pay-rolls for July		$33, 127 10
Bills of supplies		36, 426 18
Foreign ticket balances		6, 406 28
174 Advanced charges		10, 311 84
Incumbrances, E. D.		200 00
Right of way, E. D.		404 12
Do. W. D.		196 00
Fencing		2, 526 64
Rolling stock		28, 804 85
Taxes, "special,"		226 38
Exchange, dis. and com's		3, 624 82
First mortgage bond coupons		29, 431 12
Milwaukee City do.		14, 988 70
	94, 785 55	166, 674 03

September, 1861,

Receipts:		
Freight	$94, 133 13	
Passengers and foreign tickets	30, 113 29	
U. S. mails	4, 445 86	
Express and miscellaneous	1, 247 15	
Disbursements:		
Pay-rolls for August		$35, 757 09
Bills of supplies		31, 613 12
Advanced charges		19, 049 28
Foreign ticket balance		7, 414 48

Right of way, E. D.		$735 36
Do. W. D.		46 50
Fencing		504 47
First mortgage bond coupons		5, 847 60
Milwaukee City do.		6, 270 78
L. Ward, receiver, ac.		3, 637 73
175 Int. land grant bond		6, 500 00
Rolling stock		15, 748 40
	$129, 939 43	133, 124 81

OCTOBER, 1861.

Receipts:		
Freights	$167, 855 57	
Passenger and foreign tickets	38, 903 93	
U. S. mails	638 68	
Express and miscellaneous	1, 419 11	
Disbursements:		
Pay-rolls for Sept		$32, 981 38
Bills of supplies		41, 003 14
Advanced charges		31, 321 25
Foreign ticket balances		9, 539 94
Right of way, E D.		1, 066 68
Do. W. D		93 00
Fencing		3, 105 70
Rolling stock		9, 170 80
Int. on land grant bond		1, 515 00
Ex. dis. and com's		27 44
First mortgage bond coupons		6, 868 00
Milwaukee City do.		4, 524 78
L. Ward, receiver, ac		7, 239 48
	208, 817 29	148, 456 59

NOVEMBER, 1861.

Receipts:		
Freight	$122, 776 43	
Passenger and foreign tickets	34, 128 25	
U. S. mails	8 69	
176 Express and miscellaneous	2, 411 21	
Disbursements:		
Pay-rolls for Oct		$39, 604 36
Bills of supplies		27, 253 82
Foreign ticket balances		6, 707 19
Advanced charges		18, 869 14
Right of way, E. D.		419 90
Do. W. D.		109 64
Fencing		3, 197 02
Land grant mortgage		11, 985 00
Sinking fund		12, 000 00
L. Ward, receiver, ac		9, 729 22

187

Helfenstein mortgage		$3, 451 33
Fire ins.		2, 219 98
Chicago and NW. railway ac.		3, 393 88
Ex. dis. and com's		122 53
First mortgage bond coupons		33, 290 70
Milwaukee City do.		1, 838 18
	$159, 324 58	174, 191 89

DECEMBER, 1861.

Receipts:		
Freight	$70, 950 12	
Passengers and foreign tickets	31, 947 95	
Express and miscellaneous	2, 256 45	
U. S. mails	4, 390 13	
Telegraph	49	
177 Disbursements:		
Pay-roll for November		$34, 612 20
Bills of supplies		47, 752 85
Foreign ticket balances		8, 635 51
Advanced charges		6, 673 95
Incumbrances, E. D.		71 70
Right of way "		20 00
Do. W. D.		95 37
Fencing		78 00
L. Ward, receiver, ac		4, 696 00
Chicago and N. W. rw. ac.		2, 288 86
Legal expenses		299 40
Exchange, &c.		201 05
First mortgage bond coupons		1, 696 80
Milwaukee City do.		866 07
	109, 545 05	107, 987 76

JANUARY, 1862.

Receipts:		
Freight	$39, 067 60	
Passengers and foreign tickets	8, 553 15	
Express and miscellaneous	1, 031 29	
Mails	1, 428 02	
Disbursements:		
Pay-roll for Dec., '61		$26, 258 30
Bills of supplies		27, 404 87
Foreign tickets ac		5, 826 74
Advanced charges		2, 486 45
Right of way, E. D.		4, 239 06
Do. W. D		648 75
178 Fencing		1, 520 64
Ex. and del		37 25
First mortgage bonds and coupons		585 80
City of Milwaukee do.		406 52
L. Ward, receiver, ac		3, 027 06

W F. Davison ac		$527 53
Chicago and N. W. R'lway Co		2,847 07
Costs in suit		2,276 22
	$50,080 06	78,092 26

FEBRUARY, 1862.

Receipts:		
Freight	$40,741 11	
Passenger and foreign tickets	13,311 86	
Express and miscellaneous	3,720 62	
Telegraph	80	
Disbursements:		
Pay-rolls for Jan'y		$25,382 54
Bills of supplies		29,242 48
Foreign ticket ac		2,903 21
Advanced charges		2,233 26
Incumbrances, real estate, E. D		121 20
Right of way, W. D		54 75
Fencing		104 65
First mortgage bonds coupons		1,086 20
Ex. and dis		15 58
Chicago and N. W. railway ac		1,739 11
	57,774 39	62,882 97

179 MARCH, 1862.

Receipts:		
Freights	$37,774 39	
Passengers and foreign tickets	14,604 35	
Express and miscellaneous	1,465 64	
Telegraph	56	
Disbursements:		
Bills of supplies		$25,865 65
Pay-rolls for Feb.		26,488 19
Foreign ticket balance		3,914 87
Advanced charges		4,484 52
Right of way, E. D		35 00
Chicago and N. W. rw		2,584 46
Ex. and dis		6 03
First mortgage bonds coupons		120 60
Milwaukee City do.		8,973 13
	53,836 61	72,472 45

APRIL, 1862.

Receipts:		
Freight	$35,363 85	
Passenger and foreign tickets	18,138 27	
Express and miscellaneous	3,543 55	
Mails	5,544 29	

Disbursements:		
Pay-roll		$27, 813 12
Supply bill		23, 078 33
Foreign tickets ac		1, 627 15
180 Advanced charges		12, 394 94
Right of way, E. D		291 37
Do. W. D		400 85
Fencing		800 00
La Crosse and Minn. Packet Co		3, 500 00
Chicago and N. W. Rw. Co		6, 121 55
Ex. and int		302 04
First mortgage bonds coupons		40 30
Milwaukee City do.		722 71
	$62, 589 96	76, 092 36

May, 1862.

Receipts:		
Freight	$127, 973 98	
Passenger and foreign tickets	20, 807 30	
Express and miscellaneous	1, 595 91	
Transportation of troops	13, 942 30	
Mails	3, 096 44	
Telegraph	184 00	
Disbursements:		
Pay-rolls		$33, 836 40
Supply bills		41, 673 19
Foreign tickets ac		5, 370 39
Advanced charges		23, 419 61
Incumbrances real estate, W. D		7, 808 19
Do. E. D		93 28
Right of way, W. D		250 00
Fencing		72 82
Chicago and NW. railway		3, 308 20
L. Ward, receiver, ac		9, 985 59
181 First mortgage coupon ac		100 55
Milwaukee City do.		1, 108 68
	62, 589 96	126, 926 90

June, 1862.

Receipts:		
Freight	$113, 108 13	
Passengers and foreign tickets	25, 719 71	
Express and miscellaneous	1, 244 50	
Transportation of troops	27, 963 08	
Disbursements:		
Pay-rolls		$40, 009 36
Bills of supplies		45, 262 42
Foreign ticket ac		4, 224 62
Advanced charges		16, 877 96
Incumbrances, R. estate, W. D		8, 998 45

Right of way, E. D		$100 00
Fencing		870 43
La C. and Mil. Packet Company		3, 517 25
Chi. and NW. R'y		2, 211 78
Foreclosure expenses, 2d mortgage		5, 000 00
½ State tax, 1861		16, 062 33
Exchange		218 68
Milwaukee City bond coupons		70 36
	$168, 035 42	143, 423 64

JULY, 1862.

Receipts :		
Freight	$105, 227 33	
Passengers and foreign tickets	34, 091 98	
Express and miscellaneous	1, 054 52	
182 Mails	2, 604 23	
Telegraph	11 93	
Disbursements :		
Pay-rolls		$39, 154 65
Bill, supplies		35, 901 85
Foreign ticket ac		5, 244 87
Advanced charges		18, 844 00
Grading, paving, and sewerage, E. D		1, 169 53
Incumbrances, E. D.		120 30
Right of way, W. D		30 00
Fencing		1, 300 05
L. Ward, receiver		14, 631 82
C. and NW. R'y ac		8, 803 32
First mortgage bond coupons		33, 746 05
Milwaukee City do.		35 10
	142, 989 99	158, 981 54

AUGUST, 1862.

Receipts :		
Freight	$60, 914 40	
Passengers and foreign tickets	28, 342 23	
Express and miscellaneous	973 16	
Transportation and mails	2, 433 27	
Telegraph	10 18	
Disbursements :		
Pay-rolls		$37, 453 20
Bill, supplies		40, 841 54
Foreign ticket ac		8, 553 63
Advanced charges		11, 771 91
183 Grading, paving, and sewerage, E. D		2, 786 66
Right of way, W. D		68 00
Chi. and NW. R'y		2, 168 28
La C. and Minn. Steam Packet Co		4, 566 22
L. Ward, receiver		6, 503 59

1st mortgage bond coupons		$2, 085 20
City of Milwaukee do.		315 79
	$92, 673 24	117, 114 02

SEPTEMBER, 1862.

Receipts:		
Freights	$126, 774 66	
Passengers and foreign tickets	42, 865 35	
Express and miscellaneous	1, 113 74	
Telegraph	34 55	
Disbursements:		
Pay-rolls		$30, 524 60
Bills, supplies		26, 816 13
Foreign ticket ac		9, 356 09
Advanced charges		16, 556 27
Grading, paving, and sewerage, E. D		1, 245 23
Right of way, E. D		623 00
Do. W. D		428 00
La Crosse and Minn. St'm Packet Company		4, 211 46
Chicago and NW. railway		872 99
L. Ward, receiver		3, 523 51
S. D. Hastings, State taxes		16, 062 33
Legal expenses		56 75
Money returned U. S. dept. trans. troops		93 96
184 1st mortgage bond coupons		409 01
City of Milwaukee do.		8, 627 13
	170, 788 30	119, 407 13

Receiver's report for October, 1862.

Receipts:		
Freight	$161, 021 94	
Passengers and foreign tickets	38, 426 95	
Express and miscellaneous	942 00	
Telegraph	17 58	
Disbursements:		
For pay-rolls		$33, 835 60
" bills, supplies		31, 492 25
" foreign tickets		6, 467 37
" advanced charges		25, 178 47
" grading, paving, and sewerage, E. D		571 16
" right of way, E. D		1, 200 00
" fencing		1, 612 37
" Ch. and NW. R'y Co		12, 412 95
" La C. and Minn. St. P'k't Co		2, 889 27
" rolling stock		22, 100 00
" L. Ward, receiver		4, 957 66
" legal expenses, W. D., sale W. D		1, 157 39
" do.		10 50

	" 1st mortgage bond coupons..............		$533 30
	" city of Milw. do.		2,547 35
		$200,408 47	146,965 35

NOVEMBER, 1862.

	Receipts:		
	Freight..............................	$128,397 21	
185	Passengers and foreign tickets........	33,670 27	
	Express and miscellaneous............	1,978 69	
	Chi. and N. Western railway ac..............	925 38	
	Telegraph	50 09	
	Disbursements:		
	Pay-rolls		$39,507 44
	Bills, supplies.............................		35,578 11
	Foreign tickets...........................		11,583 44
	Advance charges..............................		21,756 03
	Grading, p , and sewerage, E. Div............		1,483 88
	Right of way, E. Div.........................		309 15
	Do. W. Div.......................		21 00
	Fencing......................................		400 00
	Rolling stock................................		516 20
	Fire insurance...............................		2,300 00
	L. Ward, rec'r...............................		3,833 00
	First mtge. bond coupons.....................		31,784 59
	City of Milw. do.		157 97
		165,021 64	149,230 81

DECEMBER, 1862.

	Receipts:		
	Freight......................................	$98,031 04	
	Passengers and foreign tickets...............	41,609 67	
	Express and miscellaneous....................	1,835 22	
	Telegraph	76 07	
	U. S. mail service...........................	5,809 19	
	Disbursements:		
	Pay-rolls		$33,976 30
	Bills, supplies..........................		55,427 28
186	Foreign tickets..........................		11,135 51
	Advanced charges.........................		19,596 96
	Grading, paving, and sewerage, E. D..........		396 70
	Right of way, W. D...........................		121 00
	Fencing......................................		351 11
	Chic. and N. Western railway.................		5,664 18
	L. Ward, rec'r...............................		1,165 80
	Cleveland judgment...........................		15,000 00
	Cattle killed during Chamberlain's adm........		300 00
	City of Milwaukee bond coupons...............		179 47
	1st mortgage bond coupons....................		2,493 18
	3 per cent. government tax on 1st mort'ge bond coupons paid in Nov'r, 1862................		974 40
		147,361 19	146,781 89

JANUARY, 1863.

Receipts :		
Freight	$43, 610 24	
Passengers and foreign tickets	13, 845 82	
Express and miscellaneous	1, 781 03	
Fire insurance	1, 000 00	
Disbursements :		
Pay-rolls		$25, 700 00
Bills, supplies		5, 051 82
Foreign tickets		1, 631 05
Advanced charges		5, 044 39
Incumbrances, east. div.		123 57
Gov't tax on pass. income, Sept		599 48
L. Ward, receiver		1, 165 05
187 Horicon R. R. military ac		60 68
Chas. Howard's judgment		1, 000 00
Chic. and N. Western R'y ac		1, 974 23
Gov't tax on pass. income, Oct		906 25
Do. do. Nov		814 83
1st mortgage coupons		876 27
City of Milw. do.		158 22
J. M. Kemball & Co.'s ac		59 58
Geo. M. Conway, patent right		800 00
	60, 237 09	45, 965 42

FEBRUARY, 1863.

Receipts :		
Freight	$60, 659 39	
Passengers and foreign tickets	17, 751 33	
Express and miscellaneous	1, 218 98	
Telegraph	15 15	
Disbursements :		
Pay-rolls		$26, 773 20
Bills, supplies		25, 698 70
Foreign tickets		5, 465 39
Advanced charges		4, 209 01
Right of way, east. div		55 00
Fencing		65 90
Insurance premium		895 00
State tax, S. D. H., treas		16, 425 70
Chic. and N. Western R'y ac		1, 662 40
Government tax, 3 per cent. on pass. earnings, Dec., 1862		759 34
Government tax, 3 per cent. on pass. earnings, Jan'y, 1863		673 54
188 Gov't tax on 1st mortg. coupons for Dec., 1862		62 40
1st mort'ge bond coupons		793 35
City of Milw. do.		1, 089 08
	79, 644 85	84, 628 01

MARCH, 1863.

Receipts :		
Freight	$43, 574 19	
Passengers and foreign tickets	27, 635 39	
Express and miscellaneous	1, 109 75	
U. S. gov't, transp. troops	156 46	
Telegraph	10 22	
Disbursements :		
Pay-rolls		$26, 135 70
Bills, supplies		24, 668 39
Foreign ticket ac.		5, 150 16
Advanced charges		6, 794 97
Right of way, east. div.		100 00
Do. do.		100 00
Fencing		30 00
J. M. Kimball & Co.'s ac.		96 00
Land grant mort'ge.		25, 000 00
Chic. and N. Western R'y		7, 096 04
La C. and Min. St'm P'ket Co		1, 511 03
Fire insurance		116 32
1st mort'ge bond coupons		350 50
City Milw. do.		8, 691 38
Legal expenses		600 00
	72, 486 01	106, 440 09

189

APRIL, 1863.

Receipts :		
Freight	$73, 682 72	
Passengers and foreign tickets	29, 545 28	
U. S. government for trans. of troops	5, 844 14	
U. S mails	1, 234 06	
Express and miscellaneous	1, 061 91	
Telegraph	11 85	
Disbursements :		
Pay-rolls for March		$29, 405 58
Bills, supplies		36, 059 05
Advanced charges		17, 034 49
Foreign ticket balance		3, 099 08
J. M. Kimball & Co.		104 00
Government tax on interest coupons		313 58
Do. do. passenger earnings		1, 200 38
Chicago and N. Western r'way ac		7, 363 22
Mil. and P. du Chien r'way ac		704 40
Paid F. Vose on ac., west. div'n		8, 394 14
1st mtge. bond coupons		472 17
Milwaukee City do		1, 425 82
	111, 379 96	105, 575 91

MAY, 1863.

Receipts :		
Freight	$135, 680 20	
Passengers and foreign tickets	37, 697 66	
U. S. mails	132 47	
Telegraph	18 29	
Express and miscellaneous	978 29	
Chicago and N. West. r'way ac	10, 925 94	
190 Disbursements :		
Pay-rolls for April		$34, 634 40
Bills, supplies		28, 716 32
Foreign ticket balances		4, 943 61
Advanced charges		15, 433 61
Chicago and N. Western r'way		3, 625 27
Lindsay Ward, rec'r's ac		6, 700 95
La Crosse and Minn. Packet Co.'s ac		514 58
Patent rights		250 00
Legal expenses, west. div'n		2, 716 69
1st mtge. bond coupons		28, 891 32
Milw. City do.		187 44
	185, 432 85	126, 614 19

JUNE, 1863.

Receipts :		
From freight	$87, 782 77	
" passengers and fgn. tickets	23, 338 98	
" U. S. mails	45 44	
" telegraph	11 22	
" La C. and M. St. Packet Co	8, 304 04	
" Ch. and NW. R'y Co	8, 195 94	
" express and miscellaneous	90 47	
Disbursements :		
For pay-rolls		$41, 156 50
" bills, supplies		21, 376 25
" foreign ticket ac		4, 038 86
" advance charges and fr't earnings refunded.		47, 344 64
" grading, paving, and sewerage, E. D		739 27
" fencing		220 00
" first mtge. bond coupons		5, 393 92
191 For Milw. City bond, coupons		306 69
For gov. taxes on pass. income, April		885 60
For Chicago and N. Western Railway Co		154 26
" La Crosse and Minn. Steam Pkt. Co		15, 152 96
" L. Ward, receiver		3, 981 75
" Milw. and St. Paul Railway Co		29, 157 45
	127, 768 86	169, 908 15

JULY, 1863.

Receipts:		
From freight	$1, 379 43	
" pass. and foreign ticket ac	3, 356 71	
" miscellaneous	228 38	

Disbursements:

For pay-rolls, June ac.		$16,163 18
" bills supplies		10,707 94
" foreign ticket ac.		3,404 71
" freight earnings refunded		2,838 01
" grading, paving, and sewerage, E. D.		117 00
" right of way, E. D.		442 25
" Chas. H. Roberts, (court order)		700 00
" Legal expenses: M. H. Carpenter, 62 56; E. Mariner, 12		74 56
" 1st mtge. bond, coupons		934 69
" 3 per cent. gov't tax on June payment		1,057 80
" city of Milw. do.		139 48
" 3 per cent. tax, gov't		47 25
" gov't tax on pass. income, May		1,026 49
" Ch. and N. West'n Railway		476 88
	$4,964 52	38,130 24

192 AUGUST, 1863.

Receipts:

From tickets	$114 85	
" U. S. mail service	12,519 92	
" miscellaneous	1,271 70	

Disbursements:

For bills supplies		$2,956 84
" freight earnings refunded		635 43
" grading and paving, E. Div		1,004 86
" right of way, do.		40 00
" 1st mtge. bond coupons		1,674 64
" Milw. City do.		17 04
" Ch. and N. West'n R'y Co.		668 03
	13,906 47	6,996 84

SEPTEMBER, 1863.

Receipts:

From tickets, balances to June 1, 1863	$2,342 72	

Disbursements:

For bills, supplies, &c., previous to June 1, '63		$502 13
" freight ac. " "		28 58
" grading, paving, and sewerage, E. D.		485 54
" balance of State tax, 3 per cent., on earnings for 1862		16,425 69
" 1st mtge. bond coupons		350 50
" Milw. City		8,928 48
	2,342 72	26,720 92

1827

193

OCTOBER, 1863.

Receipts:		
Foreign tickets, balances	$837 56	
U. S. mails	252 56	
Disbursements:		
Bills, supplies, old accounts		$210 50
Foreign ticket balances		1,378 07
Incumbrances		190 66
Freight earnings refunded, old ac's		96 95
La Crosse and Minne. Packet Co. ac		859 29
1st mtge. bond coupons		51 12
Milw. City do.		596 36
2d mtge. do.		441 65
Gov't tax, 3 per cent., in coupons, paid in quarter ending Sept. 30		347 10
	1,090 12	4,171 68

NOVEMBER, 1863.

Receipts:		
U. S. mails	$156 35	
Disbursements:		
Bills supplies		$170 93
Foreign ticket balances		89 93
Right of way, east. div		25 53
Do. west. div		13 12
Freight earnings refunded		13 65
1st mtge. bond coupons		31,777 44
Milw. City do.		187 45
	156 35	32,278 05

194

DECEMBER, 1863.

Receipts:		
U. S. government transp. of troops	$4,330 02	
Disbursements:		
Bills supplies, old ac		403 11
Freight earnings refunded		18 51
1st mtge. bond coupons		1,090 47
Milw. City do.		1,292 65
	4,330 02	2,804 74

JANUARY, 1864.

Receipts: None.

Disbursements:

Bills supplies, old ac's		$1 74

Incumbrances, east. div		$116 98
Gov. tax 3 per cent. on coupons paid quarter ending Dec. 31, 1863		1,064 62
1st mortgage bonds coupons		957 87
Milw. City do.		206 79
		2,348 00

FEBRUARY, 1864.

Receipts:		
Freight	$94 28	
Passengers	3 15	
Disbursements:		
Foreign ticket balances		$14 06
1st mtge. bond, coupons		77 98
Chicago and N. West'n R'way Co., military ac.		2,210 59
	97 43	2,302 63

195 MARCH, 1864.

Receipts: None.

Disbursements:		
Bills supplies, old ac's		$206 65
Foreign ticket balances		14 59
Freight earnings refunded		201 81
Incumbrances, east. div., city taxes		1,068 85
Right of way		216 25
1st mtge. coupons		58 49
Milw. City do.		9,314 74
		11,081 38

APRIL, 1864

Receipts:		
U. S. government military transportation	$146 24	
Milw. and St. Paul R'way Co	68,285 50	
Disbursements:		
Wesly Kinney, (judgment for damages)		$2,048 92
Freight earnings refunded		289 31
Right of way, E. Div		80 00
Milw. City bond coupons		187 66
	68,431 74	2,605 89

MAY, 1864.

Receipts:		
Freight earnings refunded	$31 64	
Foreign ticket balances	10 03	
Exchange account, balance	422 65	

Disbursements:		
Bills for cattle killed, &c., old ac's		$177 00
Right of way, east. div		400 00
Legal expenses		15 00
196 1st mortgage bond coupons		33, 105 88
Milwaukee City do.		597 10
	$464 32	34, 294 98

197 And afterwards, on the 28th day of June, 1864, came Hans Crocker, receiver in this cause, and filed his report for the month of May, as follows:

U. S. circuit court, State of Wisconsin.

James T. Soutter, surviving trustee,
vs.
La Crosse and Milw. R. R. Co. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1864.

H. CROCKER, *Receiver.*

Balance cash on hand April 30, 1864		$103, 947 74
Receipts:		
Freight earnings refunded		31 64
Foreign ticket balances		10 03
Exchange account balance		422 65
Disbursements:		
Vouchers for cattle killed, &c	$177 00	
Right of way, eastern div	400 00	
Legal expenses	15 00	
First mortgage bond coupons	33, 105 88	
Milw. City do. do.	597 10	
	34, 294 98	
Bal. cash on hand May 31, 1864	70, 117 08	
	104, 412 06	104, 412 06

198 State of Wisconsin,
Milwaukee County, ss:

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of June, A. D. 1864.

W. L. HINSDALE,
Notary Public Milw. Co., Wis.

And afterwards, on the 30th day of June, 1864, came Alexander Fleming and the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, esq., and filed their exceptions to the report of Hans Crocker, the receiver, herein filed on the first day of June, 1864, and the supplement thereto filed on the 28th day of June, 1864, as follows:

199 In the circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS, defendants.

Alexander Fleming, who, by leave of court, defends in the name of the Milwaukee and Minnesota Railroad Company, comes here into court by Matt. H. Carpenter, his solicitor, and having examined the pretended report or continuous monthly accounts of Hans Crocker, esq., receiver in this cause, which was filed in the office of the clerk of this court on the 1st day of June, A. D 1864, and the supplementary report by said receiver filed June 28th, 1864, in this cause, in pretended obedience to an order of said court in said cause made on the 28th day of April, A. D. 1864, in substance as follows, viz: "Ordered by the court that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th June, 1863, by the first
day of June next, and that any person interested may examine the
200 same and file exceptions thereto; and that H. L. Palmer, esq., be and
is appointed an auditor to report on the same to the next term of this court."

The said Milwaukee and Minnesota Railroad Company excepts thereto follows :

1st exception. That the said report of said receiver or continuous monthly account and supplement, so filed as aforesaid, are not a compliance with said order in this, that they do not state nor show the receipts or disbursements of the said Crocker as receiver in this cause from the time of his appointment in this cause, nor during any part of the time since his appointment in this cause; nor do the same or either of them state or show, as the said order contemplated and directed, the receipts or disbursements by said Crocker, as receiver in this cause separate from his receipts and disbursements as receiver in the cause of Greene C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Company and others; and for that said reports or accounts have designedly mingled together the accounts of said Crocker as receiver in this cause with the accounts of
receipts and disbursements by him in *in* his character as receiver in
201 the said cause of Bronson, Soutter, and Knapp *vs.* the La Crosse and
Milwaukee Railroad Company and others; so that it is impossible to determine from said reports or accounts how much the said receiver has received from or disbursed upon the mortgaged premises in this cause, or how much money is or ought to be in his hands as receiver in this cause; but that the said receiver has designedly so mingled and confused said accounts for the purpose of concealing and so effectually to conceal the true condition of the fund in his hand as receiver in this cause, and for the purpose of concealing and so as to conceal the fact which this defendant states and shows to the court does exist; that the said Crocker in his character as receiver in the said cause of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company and others, defendants, is indebted to himself in his capacity as receiver in this cause to an amount exceeding one hundred thousand dollars, but what precise amount this defendant is unable to state

or show to the court here; whereas the said receiver ought and by said order was required to file in said court a continuous monthly account
202 of his receipts and disbursements as receiver in this cause only, and relating to the mortgage premises in this cause—that is, the railroad from Milwaukee to Portage, together with the rolling stock and franchise pertaining thereto—separate and distinct from his account of receipts and disbursements as receiver in the said cause of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company and others, defendants, thereby showing the state of accounts between the said Crocker in his capacity as receiver in that cause and the said Crocker as receiver in this cause.

2d exception. For that the several items, statements, matters, and things in said pretended report or continuous monthly report are so general, vague, and indefinite as to render it impossible to ascertain whether they are just and true or not; whereas the said receiver ought and by such order was required to set forth in detail, and item by item, the several moneys received and disbursed by him as receiver in this cause, showing for what particular things and to what particular persons the said disbursements were made.

3d exception. This defendant further objects and excepts to each
203 and every statement, item, matter, and thing in the said report or pretended continuous monthly account and the said supplement aforesaid, and shows to the court here that the same and each and every of the same are untrue, false, and fraudulent, and hereby offers to aver, maintain, and prove the same to be untrue, false, and fraudulent as aforesaid, in every item, matter, and thing set forth in said report, accounts, and supplement, by the oath of the said receiver and his employees and agents and an examination of all the books, papers, and vouchers in the hands of the said receiver *as receiver in this cause.*

4th exception. For that the said report or continuous monthly account and supplement, filed as aforesaid, does not charge or report any account against Hans Crocker as receiver in the case Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, defendants, nor against the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad, so called, upon the western division of said road, so called; whereas there should have been charged in said account therefor more than
204 two hundred thousand dollars

5th exception. For that in said account or report and supplement, filed as aforesaid, the said receiver has not stated or shown the receipts and disbursements of each month from June 13th, 1863 to April 1st, 1864, being the time the said eastern division was operated by the Milwaukee and St. Paul Railway Company, as he ought and by said order was required to do, but simply gives a gross sum as the pretended balance of receipts over disbursements for operating said eastern division during that time.

6th. exception. For that in the said account, filed as aforesaid, the eastern division of said road is charged in favor of the Milwaukee and St. Paul Railway Company a large sum for the use of the rolling stock which belongs to the said eastern division, and to which the said Milwaukee and St. Paul Railway Company has no title or right whatever.

7th exception. For that said account credits the said receiver with a large sum as disbursed by him for supplies upon the whole railroad from Milwaukee to La Crosse without any statement as to whether the said disbursements were made by him as receiver in this cause of the eastern
205 division, or by him as receiver in the cause Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, defendants aforesaid, of that part of said railroad not covered by the mortgage in this cause, and without any statement as to which division of said road said supplies were used upon.

8th exception. For that the said account does not charge the Milwaukee and St. Paul Railway Company for the use of the office belonging to the eastern division, nor for the use of the repair shops belonging to the eastern division; whereas there should have been charged thereon more than fifty thousand dollars therefor.

And this defendant claims the right to make more definite and specific oral exceptions before the said auditor appointed to report on said account, and the right to falsify the whole of the said account; and that an account shall be stated by the said auditor showing the exact amount of receipts and disbursements of the said Crocker as receiver in this cause separate and distinct from all receipts or disbursements by the said Crocker as receiver in the said cause of Bronson, Soutter, and Knapp *vs.* the La Crosse and 206 Milwaukee Railroad Company and others, defendants; and also an account showing the true state of the accounts between the eastern and the western divisions of said railroad for operating the same, respectively, since the appointment of the receiver in this cause, charging the Milwaukee and St. Paul Railway Company with the use of all rolling stock belonging to said eastern division and at any time used upon said western division; also charging said last-named company with reasonable sum as rent for the repair shops and offices belonging to said eastern division of said railroad. And this defendant claims and prays a hearing before said auditor to the end aforesaid and for the purpose aforesaid, and such other or further relief as the nature of the case may require.

MATT. H. CARPENTER,
Solicitor for A. Fleming, who defends in this cause by leave of court in the name of the Milwaukee and Minnesota Railroad Company.

207 In circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and having examined the pretended report, or continuous monthly account of Hans Crocker, esq., receiver in this cause, which was filed in the office of the clerk of this court on the 1st day of June, A. D. 1864, and the supplementary report by said receiver, filed June 28th, 1864, in this cause, in pretended obedience to an order of said court in said cause, made on the 18th day of April, A. D. 1864, in substance as follows, viz:

"Ordered by the court that the receiver file in this court a continuous monthly account of his receipts and disbursements as receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th June, 1863, by the first day of June next, and that any person interested may ex- 208 amine the same and file exceptions thereto; and that H. L. Palmer, esq., be and is appointed an auditor to report on the same to the next term of this court.

The said Milwaukee and Minesota Railroad Company excepts thereto as follows:

1st. exception. That the said report of said receiver, or continuous monthly account and supplement, so filed as aforesaid, are not a compliance with said order in this, that they do not state nor show the receipts nor disbursements of the said Crocker as receiver in this cause from the time of his appointment in this cause, nor during any part of the time since his appointment in this cause; nor do the same, or either of them, state or show, as the said order contemplated and directed, the receipts or disbursements by said Crocker as receiver in this cause separate from his receipts and disbursements as receiver in the cause of Greene C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Company and others; and for that the said reports or accounts have designedly mingled together the accounts of receipts and disbursements of said Crocker as receiver in this cause with the accounts of receipts and disbursements by him in his character as receiver in the said cause 209 of Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, so that it is impossible to determine from said reports or accounts how much the said receiver has received from or disbursed upon the mortgaged premises in this cause, or how much money is, or ought to be, in his hands as receiver in this cause; but that the said receiver has designedly so mingled and confused said accounts for the purpose of concealing, and so as effectually to conceal, the true condition of the fund in his hand as receiver in this cause, and for the purpose of concealing and so as to conceal the fact which this defendant states and shows to the court does exist; that the said Crocker in his character as receiver in the said cause of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company and others, defendants, is indebted to himself in his capacity as receiver in this cause to an amount exceeding one hundred thousand dollars, but what precise amount this defendant is unable to state or show to the court here; whereas the said receiver ought, and by said order was required, to file in said court a continuous monthly account of his receipts and disbursements as receiver in this cause only, and relating *and relating* to the mortgage premises 210 in this cause—that is, the railroad from Milwaukee to Portage, together with the rolling stock and franchises pertaining thereto—separate and distinct from his account of receipts and disbursements as receiver in the said cause of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company and others, defendants, thereby showing the state of accounts between the said Crocker in his capacity as receiver in that cause and the said Crocker as receiver in this cause.

2d exception. For that the several items, statements, matters, and things in said pretended report, or continuous monthly report, are so general, vague, and indefinite as to render it impossible to ascertain whether they are just and true or not; whereas the said receiver ought and by said order was required to set forth in detail, and item by item, the several moneys received and disbursed by him as receiver in this cause, showing for what particular things and to what particular persons the said disbursements were made..

3d exception This defendant further objects and excepts to each and every statement, item, matter, and thing in the said report, or pre- 211 tended continuous monthly account, and the said supplement aforesaid, and shows to the court here that the same, and each and every of the same, are untrue, false, and fraudulent, and hereby offers to aver, maintain, and prove the same to be untrue, false, and fraudulent as aforesaid, in every item, matter, and thing set forth in said report, or accounts, and supplement, by the oath of the said receiver and his employees and agents, and an examination of all the books, papers, and vouchers in the hands of the said receiver *as receiver in this cause.*

4th exception. For that the said report, or continuous monthly accounts and supplement, filed as aforesaid, does not charge or report any account against Hans Crocker as receiver in the case Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, defendants, nor against the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad, so called, upon the western division of said road, so called; whereas there should have been charged in said account therefor more than two hundred thousand dollars.

212 5th exception. For that in said account, or report and supplement, filed as aforesaid, the said receiver has not shown nor stated the receipts and disbursements of each month from June 13th, 1863, to April 1, 1864, being the time the said eastern division was operated by the Milwaukee and St. Paul Railway Company as he ought and by said order was required to do, but simply gives a gross sum as the pretended balance of receipts over disbursements for operating said eastern division during that time.

6th exception. For that in said account, filed as aforesaid, the eastern division of said road is charged in favor of the Milwaukee and St. Paul Railway Company a large sum for the use of the rolling stock which belongs to the said eastern division, and to which the said Milwaukee and St. Paul Railway Company have no title or right whatever.

7th exception. For that said account credits the said receiver with a large sum as disbursed by him for supplies upon the whole railroad from Milwaukee to La Crosse without any statement as to whether the said disbursements were made by him as receiver in this cause of the eastern division, or by him as receiver in the cause of Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railway Company and others, de-
213 fendants aforesaid, of that part of said railroad not covered by the
mortgage in this cause, and without any statement as to which division of said road said supplies were used upon.

8th exception. For that the said account does not charge the Milwaukee and St. Paul Railway Company for the use of the offices belonging to the eastern division, nor for the use of any repair shops belonging to the eastern division; whereas there should have been charged therein more than fifty thousand dollars therefor.

And this defendant claims the right to make more definite and specific oral exceptions before the said auditor, appointed to report upon said account, and the right to falsify the whole of the said account, and that an account shall be stated by the said auditor showing the exact amount of receipts and disbursements of the said Crocker as receiver in this cause separate and distinct from all receipts or disbursements by the said Crocker as receiver in the said cause of Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee Railroad Company and others, defendants, and also an account showing the true state of the accounts between the eastern and western divisions of said railroad for operating the same, respectively,
214 since the appointment of the receiver in this cause, charging the Mil-
waukee and St. Paul Railway Company with the use of all the rolling stock belonging to said eastern division, and at any time used upon said eastern division, also charging said last-named company with reasonable sum as rent for the repair shops and offices belonging to said eastern division of said railroad. And this defendant claims and prays a hearing before said auditor to the end aforesaid and for the purpose aforesaid, and for such other or further relief as the nature of the case may require.

The Milwaukee and Minnesota Railroad Company, by—

MATT. H. CARPENTER, *its solicitor.* [SEAL.]

And afterwards, on the 30th day of July, 1864, comes Hans Crocker, esq., receiver, and files his report for the month of June, 1864, as follows :

215 U. S. circuit court, State of Wisconsin.

James T. Soutter, surviving trustee,
vs.
La Crosse & Milw. R. Road *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of June, 1864.

H. CROCKER, *Rec.*

Bal. cash on hand May 31, 1864	$70, 117 08
Receipts, none.	
Disbursements:	
Right of way, east. div	905 00
Incumbrance, do,	28 36
1st mortgage bond coupons	155 98
Cash on hand	69, 027 74
	70, 117 08

State of Wisconsin, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of June, A. D. 1664, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of July, A. D. 1864.

W. L. HINSDALE,
Notary Public, Mil., Co., Wis.

216 And afterwards, on the 31st day of August, 1864, came Hans Crocker and filed his report for the month of August, as follows:

U. S. circuit court, State of Wisconsin.

James T. Soutter, surviving trustee,
vs.
La Crosse and Milw. R. Road Co. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1864.

H. CROCKER, *Rec.*

Bal. cash on hand July 31, 1864	$68, 776 00
Receipts:	
Sundry ac's	55 00
	68, 831 70

Disbursements:

Loss and damage	$25 00
Incumbrances, east. div'n	3,116 00
1st mortgage coupons	116 98
Milw. City do.	17 06
Bal. cash, Aug. 31, '64	65,556 66
	68,831 70

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of August, A. D. 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of August, 1864.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

217 That afterwards, at a stated term of said circuit court, begun and held according to law in Milwaukee, in said district, on the second Monday, being the 12th day, of September, A. D. 1864.

Present: The Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the 9th circuit, presiding judge of said circuit court, and Honorable Andrew G. Miller, district judge, also judge of said court; Darius C. Jackson, marshal; A. Scott Sloan, clerk.

Among others the following proceedings were had, viz:

On the 13th day of September, A. D. 1864, came the United States Trust Company, by its solicitor, N. A. Cowdrey, esq., and filed its petition for payment of arrears as sinking fund for instructions, &c., as follows:

Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
and others.

To the judges of the circuit court of the United States for the 9th circuit, and for the district of Wisconsin, in equity:

218 Your petitioner, the United States Trust Company, of the city of New York, a corporation located in and a citizen of the city and State of New York, respectfully shows to this court, upon information and belief, except so far as their own acts are concerned, that the La
219 Crosse and Milwaukee Railroad Company, a corporation incorporated by and located in the State of Wisconsin, on the 13th day of June, A. D. 1854, executed and delivered to Francis A. Palmer, in trust for the holders of the bonds therein described, a mortgage or trust deed, to secure the payments of the indebtedness therein named, represented by bonds payable to the bearer, amounting in an aggregate to the sum of $950,000, with interest at 8 per cent. per annum, payable in the city of New York, and of which the principal matures and becomes due on the 1st day of November, 1874.

That afterwards, to wit, on the 18th day of February, 1856, for the better security and repayment of said indebtedness, the said railroad company executed and delivered to said Francis A. Palmer, a supplemental deed of trust to the deed of trust first above named, by which supplemental deed of

trust your petitioner was made and constituted a trustee or receiver, to whom said railroad company covenanted and agreed in said supplemental trust deed to pay the sum of $12,000 per annum, on the 1st day of November
in each year, together with the accumulations of interest thereon;
220 which money it was agreed should be used in the purchase of the
bonds named in said supplemental deed, wherever they could be purchased at or under par, and the accrued interest thereon at the date of purchase and in case the securities above named of said railroad company cannot be purchased at par, and accrued interest, then your petitioner is required to invest said money under the advice and direction of the board of directors of the said railroad company. Your petitioner attaches hereto, marked as "Exhibit A," a printed pamphlet containing, from page 7 and onward, a copy of said trust deed and of said supplemental trust deed, to which your petitioner begs leave to refer as part of this petition.

That said railroad company has become insolvent, and, as your petitioners are informed and believe, has now no legal organization or board of directors.

That all the premises described in said trust deeds are situated in the State of Wisconsin, and, together with all the income derived therefrom, are in the
hands and custody of a receiver of this court.

221 That the net income from said premises is large and much more
than sufficient to pay the liens and claims herein described, and which this court is petitioned to order the payment.

That before said insolvency and appointment of a receiver, and before the mortgage sought to be foreclosed in this cause was made, and before the creation of any other lien thereon, the said railroad company made a certain other mortgage or trust deed to the city of Milwaukee to secure the payment of certain bonds therein named, part of them known as the Milwaukee City bonds issued to the Milwaukee, Fon du Lac, and Green Bay Railroad Company, and part of them as the Milwaukee City bonds issued to the La Crosse and Milwaukee Railroad Company, amounting in the aggregate issued to both of said railroad companies to the sum of $314,000 of Milwaukee City bonds, is, as your petitioner is informed and believes, next in priority of right to the mortgage or trust deeds named as given to Francis A. Palmer.

That said La Crosse and Milwaukee Railroad Company and its successors have only partially kept their agreement to pay said sinking fund, and that
there is now due your petitioner the sum of $54,160, as more fully
222 appears by detailed statement hereto attached, marked "Exhibit B."

That they as said trustee and receiver have now on hand, as will more fully appear by the statement hereto attached, marked "Exhibit C," the sum of $5,756 93-100, all of which they are unable to invest, as requested by the terms of the trust deed, in the purchase of said mortgage bonds at par and the accrued interest thereon.

That in the exercise of a reasonble discretion, and believing it to be necessary and proper for the interest of the bondholders under said trust deeds, your petitioner has employed, at the expense of said trust, to assist them, N. A. Cowdrey, esq., a counsellor of the Supreme Court of the United States, and believed by your petitioner to be learned in the law of railroad mortgages and trust deeds.

That said Cowdrey charges for his services the sum of $500, as per statement hereto attached, marked "Exhibit D."

Wherefore your petitioner prays that said receiver may be ordered
223 to pay the sum of $54,160 now due them as sinking fund under said
deeds of trust, and the further sum of $500 as compensation for the services of said Cowdrey.

And that the said receiver be ordered, so long as said premises remain in the custody of this court, to pay to your petitioner the sum of $12,000 on the first day of November in each year.

And that your petitioner be ordered to invest any surplus money that they now, or hereafter at any time shall, have on hand which they are unable to invest, as directed by said supplemental trust deed, in the purchase of the city of Milwaukee bonds issued to the Milwaukee, Fon du Lac, and Green Bay Railroad Company, and in the purchase of the Milwaukee City bonds issued to the La Crosse and Milwaukee Railroad Company, wherever they can purchase either of said issue of Milwaukee City bonds at a price not exceeding par and the accumulated interest thereon. And in the event that your petitioners cannot purchase said city bonds at par and interest 224 or less, that they be ordered to invest said money belonging to said sinking fund in the purchase of any of the bonds or stocks of the United States of America, at the discretion of your petitioners as to the price to be paid.

And your petitioners, as in duty bound, will ever pray.

United States Trust Co., of N. Y., by—

JOHN A. STEWART, *Sec'y.*
I. LA DUE, *of Counsel.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

John A. Stewart, being duly sworn, deposeth and says that he is the secretary of the United States Trust Company, the petitioner above named, that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge, except as the matters therein stated to be on information and belief, and as to those matters he believes to be true.

JOHN A. STEWART.

Subscribed and sworn to before the undersigned, a notary public residing in the city and State of New York, this 7th day of March, 1863.

JOHN S. AMES,
Notary Public, N. Y. City.

225

EXHIBIT A.

The Palmer mortgages on eastern division.

This indenture, made the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, party of the first part, and Francis A. Palmer, of the City of New York, party of the second part, witnesseth: Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are now engaged in constructing a railroad from the city of Milwaukee, on Lake Michigan, to La Crosse, on the Mississippi River, in the State of Wisconsin, and for that purpose, in part, have resolved to raise a sum of money by loan for the purpose of purchasing iron, rails, and machinery therefor, and of aiding in the construction of said railroad and putting the same into operation, and for the objects and purposes aforesaid; and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed and intended, by the said parties of the first part, to execute, issue and deliver five hundred bonds or writings obligatory, each for the sum of one thousand dollars, to be numbered respectively from number one (1) to five hundred (500,) inclusive, and nine hundred bonds, each for the sum of five hundred dollars, to be numbered respectively from number one

1859

(1) to nine hundred (900) inclusive, which bonds are to be in the following form:

226 United States of America, State of Wisconsin.

No—. *The La Crosse and Milwaukee Railroad Company.* $——.

Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to Francis A. Palmer, or bearer, in the sum of dollars, which sum said company promise to pay the said Francis A. Palmer, or to the holder hereof, at the Broadway Bank, in the city of New York, on the first day of November, in the year one thousand eight hundred and seventy-four, and also interest thereon at the rate of eight per centum per annum, semi-annually, on the first day of each November and of each May ensuing the date hereof, until the said principal sum shall be paid on the presentation and delivery of the annexed warrants at said bank. This bond is one of a series of fourteen hundred bonds of the company aforesaid, of even date, to wit: 500 bonds for the sum of $1,000 each, numbered respectively from number 1 to number 500 inclusive, and 900 bonds for the sum of $500 each, numbered respectively from number 1 to number 900 inclusive, amounting in the aggregate to $950,000, secured by a mortgage executed in trust to Francis A. Palmer, of the city of New York, upon that part of the road of said company extending from its eastern termination, in the city of Milwaukee, to Portage City, being 95 miles in distance, together with the property and effects of said company on that part of the road. And said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same was a note of hand payable to bearer.

The holder of this bond shall be entitled, at any time within ten years from the date hereof, to convert the principal sum into the stock of the said company, at par, on surrendering this bond, with the interest warrants then not due annexed.

In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, at Milwaukee, the first day of July, 1854.

—— ——, *President.*
—— ——, *Secretary.*

227 I hereby certify that the La Crosse and Milwaukee Railroad Company have executed to me in trust the mortgage referred to in the foregoing bond, and that I have caused the same to be recorded in the several counties wherein said mortgaged premises are situated, and that the foregoing is one of the several bonds described in and secured by said mortgage.

—— ——, *Trustee.*

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds, and interest thereon accruing, and in consideration of one dollar paid to the said company by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey, to the said party of the second part, his successor or successors in the trust hereby created, all their said road, from its eastern termination, in the city of Milwaukee, to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied or so to be for right of way within the limits aforesaid, together with

bridges, fences, privileges, rights, and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues and profits to be had from the same, and all lands used for and occupied within the limits aforesaid by depots and stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shop tools and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed and to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad, within said limits, and all its rights, credits, and franchises thereunto appertaining. But nothing herein contained shall be so construed as to prevent the said parties of the first part from selling, hypothecating, or otherwise disposing of any city or county bonds or other securities received in payment of stock or otherwise, or of any lands or
228 other property of said company not necessary to be retained for the roadway, depots, and stations now required for the construction or convenient use of that part of said road, nor from collecting moneys due said company on stock subscription or otherwise, nor shall anything herein contained be so construed as to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repair of the remaining parts of said road westward towards the Mississippi River, all stock subscriptions, donations, or loans of money, lands or other property which may have been, or may hereafter be, made for that purpose; but said parties of the first part shall have full right so to proceed, without let or hindrance from said party of the second part. And the remaining portion of the said railroad which, by the said parties of the first part, may be so constructed, shall be held in use by the said parties of the first part, to their own benefit and behoof forever, so far as the claims of the said party of the second part, or his successor, might otherwise be construed as in conflict therewith. It being distinctly understood that the conveyance made by this indenture is only for so much of the present or hereafter to be acquired rights, interest, and property of the said company, parties of the first part, as are or shall be vested or belong or appertain to that part of said railroad extending from the city of Milwaukee to Portage City aforesaid, and being in distance ninety-five miles. To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest of any of said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then, after sixty days after such default, (in case such principal or interest shall then remain unpaid,) upon request of the holder of such bond, it shall and may be lawful for the said party of the second part, his successor in said trust, or assigns, at his or their discretion, to enter into and upon and take possession of all and singular the whole or any part of their property and effects, mortgaged as above expressed, or so intended to be, and as the attorney in fact or agent of the said parties of the first part, by himself, or agents or substitutes, duly constituted, have and, in his or their discretion, use and employ the same, making from
229 time to time all such repairs, alterations, and addition thereto as he or they may deem necessary, and receiving the tolls, rents, issues, and profits of said part of said roalroad and appurtenances, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the second part, his successor in said

trust, and assigns, at his or their discretion, may, or on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall cause the said premises, property, and effects hereby mortgaged, or intended so to be, or so much thereof as shall be necessary to and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple of all said premises, and such other instruments as may be necessary or proper for the property or effects so sold, which shall be a bar against the parties of the first part, their successors or assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, property, or effects, or any part thereof. And said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, property, or effects hereby mortgaged, or intended so to be, or any hereof, to the said party of the second part, his successor in said trust, and as-
signs, for more fully carrying into effect the objects hereof, particu-
230 larly for the conveyance of any property or effects subsequently to
the date hereof acquired by said parties of the first part, and hereby
intended to be affixed, and these presents to be subscribed by the president, and the said party of the second part has set his hand and seal the day and year first above written.

STODDARD JUDD, [SEAL.]
President.

Signed, sealed, and delivered in presence of—
ROBERT E. GILLETT, J. H. BURNELL.

FRANCIS A. PALMER, [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. C. PETERS, LEWIS N. GLOVER.

STATE OF NEW YORK,
City and County of New York, ss:

I, Lewis N. Glover, residing in the said city of New York, duly appointed by the governor of the State of Wisconsin a commissioner for said State of Wisconsin in and for the State of New York, duly sworn and qualified to take testimony, acknowledgments, &c., to be used or recorded in said State of Wisconsin, do, by this instrument, given under my hand and official seal, certify that on this thirtieth day of June, A. D. eighteen hundred and fifty-four, before me personally appeared Francis A. Palmer, known to me to be the same person who executed the foregoing instrument; and the said Francis A. Palmer acknowledged the signing and sealing of the said instrument to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

LEWIS N. GLOVER, [SEAL.]
Commissioner for Wisconsin in New York.

STATE OF WISCONSIN,
City and County of Milwaukee, ss:

On this fifth day of July, A. D. 1854, before me, Robert E. Gillett, a notary public in and for said county of Milwaukee, and State of Wisconsin, personally came Stoddard Judd, the president of the La Crosse and Milwaukee Railroad Company, to me known, being by me duly sworn, did
231 depose and say that he resides in the town of Fox Lake, county of
Dodge, in the aforesaid State of Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that he knows the corporate seal of the said railroad company; that the seal affixed to the above and foregoing instruments, in writing, is such coporate seal; that it was so affixed by order of the board of directors of said railroad company, and that he signed his name thereto, by like order, as president of the said railroad company.

In witness whereof, I have hereto subscribed my name, and affixed my notarial seal this fifth day of July, A. D. 1854.

ROBERT E. GILLET, [SEAL.]
Notary Public, residing in the County of Milwaukee, State of Wisconsin.

Recorded July 5th, A. D. 1854, at 10 o'clock a. m.

232 *Supplemental mortgage to Francis A. Palmer.*

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county, State of New York, party of the second part. Whereas the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage covering all the real and personal property and estate appertaining to the eastern line or section of their road, extending from the city of Milwaukee to Portage City, and being about ninety-five mile in length, which mortgage bears date on the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the same counties through which said road runs, the same having been made to the party of the second part in trust to secure the payment of the principal and interest of certain first mortgage eight per cent. coupon bonds of the said company of the denominations of one thousand dollars and five hundred dollars, bearing date the first day of July, A. D. one thousand eight hundred and fifty-four, and becomming due on the first day of November, A. D. one thousand eight hundred and seventy-four, respectively, with the interest thereon from date, at the rate of eight per cent. per annum, payable half yearly thereafter, which bonds amount in the aggregate to nine hundred and fifty thousand dollars, and which the said company, by virtue of the said mortgage, contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their said eastern line or section of road from the city of Milwaukee to Portage City, as by reference to the said mortgage or the record thereof will more fully and at large appear; and whereas the said company have heretofore issued and sold a portion of the said

1863

233 bonds thus secured, amounting to four hundred and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from number one to number sixty-four inclusive, number seventy to number ninety inclusive, number ninety-six to number one hundred and one inclusive, and number one hundred and fifty-one to number three hundred inclusive, and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from number one to number four hundred and twenty inclusive, and have built and equipped about sixty-one miles of the said eastern line or section of their road, leaving on hand and in their possession unsold the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, and which the company contemplate to sell and negotiate for the purpose of raising means to aid in finishing the remainder of their said eastern section or line of road; and whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have, by a resolution by their board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net earnings of the road, and depositing with the United States Trust Company of the city of New York for the next nineteen years the sum of twelve thousand dollars, which principal sum, together with all accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of said mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, as
aforesaid, and four hundred and eighty of which are for the sum of
234 five hundred dollars each, and numbered from number four hundred
and twenty-one to number nine hundred inclusive, as aforesaid, on or
before the maturity thereof:

Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions, and agreements contained in the aforesaid indenture of mortgage heretofore executed and delivered as aforesaid, and as supplementary thereto for the considerations aforesaid, and for and in consideration of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowleged, have covenanted, promised, and agreed, and hereby do covenant, promise, and agree, to and with the said party of the second part, his successor and successors in the trust hereby created, and assigns, that for the further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, and amounting in the aggregate to five hundred thousand dollars, they will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriate from the net earnings of the said road for the preceding twelve months, and deposit with the United States Trust Company of New York, (an incorporated institution located and doing business in the city of New York,) or its successor, which said United States Trust Company, or its successor, is hereby made, constituted, and appointed the trustee or receiver of the parties hereto, and of all the holders of the resdue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage, as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which, together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amonnting to five hundred thousand dollars, 235 and numbered as last aforesaid, issued by virtue of the last aforesaid mortgage, on or before the maturity of the said last-mentioned bonds; the first setting apart and appropriating of said sinking fund to be made and deposited on the first day of November, A. D. one thousand eight hundred and fifty-six, and the sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company, or its successor, in the purchase of the residne of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are of the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from humber ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to nine hundred inclusive, issued under the aforesaid mortgage, whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same, at the date of the purchase In case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then, and in that case, the United States Trust Company, or its successor, shall, from time to time, invest the said funds, under the advice and direction of the board of directors of the party of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part, provided, however, that the obligations of the parties of the first part, to make such annual deposits to the said sinking fund, as aforesaid shall cease and determine so soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulations of interest thereon, form a capital sufficient to pay and discharge at the maturity thereof all the outstanding unconverted bonds, numbered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successors, shall at all times keep a proper and correct registry and acconnt of the said several securities and sums to be held by them as aforesaid, and belonging to the said sinking fund, for the inspection and examination of the parties hereto, and of any of the stockholders or bondholders of the road, and shall annually hereafter, during the continuance of the said trust, render to the 236 parties hereto a written statement, showing the true state and condition of the said sinking fund; and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall, as soon as purchased, be cut, cancelled, 1865.

and retained by the said United States Trust Company, or its successors, and be held and returned by them at the expiration of their trust.

The interest coupons on said purchased bonds are, however, to be regularly paid to the United States Trust Company, or its successor, by the parties of the first part, in the same manner as if held and owned by a third party for value; and in case of the resignation of the said United States Trust Company as such trustee or receiver, or of its successor, or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time appoint and substitute as a new trustee or receiver any other incorporated institution located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose; and said new trustee or receiver, or the successor thereof, shall be vested with all the right, estate, powers, and privileges hereby conveyed to or vested in the United States Trust Company. And the said United States Trust Company, or its successor, shall, upon request, forthwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property, and securities belonging to the said sinking fund so deposited with and held by them as aforesaid. The said United States Trust Company, or its successor, shall apply the funds and available securities in their hands to the payment and redemption of the said vendue of the said mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from No. 65 to No. 69 inclusive, from No. 91 to No. 95 inclusive, from No. 101 to No. 150 inclusive, and from No. 301 to No. 500 inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900 inclusive, at their maturity rendering the overplus, if any, to the parties of the first part, or their assigns. And in case the parties of the first part shall fail, neglect, or refuse to set apart, appropriate, and deposit with the United States Trust Company, or its successor, the said several sums of money, or any or either of them, for the purposes of a sinking fund at the times and in the manner hereinbefore particularly set forth and provided, then at the
expiration of sixty days from and after such default, failure,
237 neglect, or refusal, in case such payment and appropriation to the
said sinking fund shall not have been made upon the request of the holder of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from No. 91 to No. 95 inclusive, from No. 101 to No. 150 inclusive, and from No. 301 to No. 500 inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900 inclusive; or upon the request of the said United States Trust Company, or its successor, the said party of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon, and take possession of all or any part of said premises, real and personal estate and property, and as the attorney in fact or the agent of the said parties of the first part, by himself, or agents, or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid, and the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one-half of the said residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid or uncon-

verted into stock and not purchased and deposited for the sinking fund as aforesaid, shall cause the said premises, real and personal estate and property, rights and franchises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all the said residue of such mortgage bonds, numbered as last aforesaid, as may be then unpaid and unconverted and not purchased and deposited as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim of, in, or to said premises, real and personal estate and property, right and franchises, or any part thereof.

The amount of the bids or purchase-money on the said sale may be
238 paid and satisfied in whole or in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unemployed cash assets belonging to the sinking fund, as compared to the amount of outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds, numbered as last aforesaid, issued under the said mortgage and not converted nor purchased for the sinking fund, nor used in payment of such bid as aforesaid, and shall pay over and restore the remainder of said proceeds to parties of the first part, their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said party of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the parties of the first part hereby covenant, for the considerations aforesaid, to execute and deliver any further necessary or reasonable conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests, or property, subsequently to the date hereof, acquired by said parties of the first part, and comprehended or intended to be in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and transportation of iron rails and machinery and for the construction and extension of said road and the expenses attending such loan and purchase, and the said rails and machinery so purchased shall be transported
239 and used with due diligence in the construction, finishing, and fur-

1867

nishing said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors in the trust hereby created, or assigned, shall be void; and when the principal and interest of all the residue of the said mortgage bonds issued under the said mortgage shall be fully paid, and the residue of said bonds, numbered as aforesaid, duly cancelled, the said party of the second part, his successor or succesors in the trust hereby created, or assigns, shall, upon the request of the parties of the first part, or their assigns, duly execute and acknowledge the payment and satisfaction of this agreement, and shall deliver up the same to the parties of the first part or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, it shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control, and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, when such agent or attorney is selected with reasonable discretion; and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust in case he or they shall be compelled to take possession of said premises and real and personal property and estate, or any part thereof, or to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and control in the premises, shall be divested, cease, and determine; and the said parties of the first part shall, or in their default to take proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage, may apply to the supreme court of the State of Wisconsin, to appoint in his place a new trustee, being resident of the city of New York, and thereupon and upon his acceptance of the trust,
240 such new trustee shall become vested, for the purposes aforesaid,
with all the rights, estate, property, and interest, hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements, or conveyances, for that purpose, to the end that the true interest, object, and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereunto caused to be affixed their corporate seal, and these presents to be signed by their president, and countersigned by their secretary, at Milwaukee, Wisconsin, and the said party of the second part has also hereunto set his hand and seal.

BYRON KILBOURN,
Pres. La Crosse and Milwaukee R. R. Co.

In presence of—
J. McNeal.
Charles E. Jenkins.

F. A. PALMER, *Trustee.*

[L. S.] Attest: LEVI BURNELL.

Witness as to signature of F. A. Palmer, trustee—
William A. Woodward.
John J. Hill.

The foregoing indenture has been duly acknowledged by the respective parties thereto, and is recorded in the clerks' offices of the several counties from Milwaukee to Columbia, being the counties in which the section of road is situated.

241 "Exhibit B."—(Referred to in the foregoing petition.)

La Crosse and Milwaukee Railroad Co. and its successors in acc't with U. S. Trust Co. of N. Y.

Dr.

To instalment on sinking fund due November 1, 1856........	$12,000
To............do.............do...............1857........	12,000
To............do.............do...............1858........	12,000
To............do.............do...............1859........	12,000
To............do.............do...............1860........	12,000
To............do.............do...............1861........	12,000
To............do.............do...............1862........	12,000
To............do.............do...............1863........	12,000
	96,000

Cr.

Oct. 24, 1856, by cash due November 1, 1856,........	$12,000	
Dec. 8 and 26, 1857.....do............1857.........	12,000	
Nov. 1, 1858...........do............1858.........	12,000	
Nov. 29, 1861..........do............1859.........	12,000	48,000
		48,000
Add int'st on instal't of $12,000 due Nov. 1, 1860, to March 1, 1864.		2,800
Add......do............do............1861..........do....		1,960
Add......do............do............1862..........do....		1,120
Add......do............do............1863..........do....		280
242 Making amount in arrears March 1, 1864..............		54,160

"Exhibit C."—(Referred to in the foregoing petition.)

La Crosse and Milwaukee railroad sinking fund in acc't with U. S. Trust Co of N. Y.

Cr.

By cash received from October 24, 1856, to November 1, 1863.		$72,200 00

Dr.

To cash paid for $75,000 bonds, as per detailed statements rendered to H. Crocker, receiver....	$62,419 69	
To cash disbursements from October, 1856, to March 1, 1864..............................	4,023 40	66,443 07
Leaving to credit of sinking fund, March, 1, 1864..........		5,756 93

1860

"Exhibit D."—(Referred to in the foregoing petition.)

243 *The United States Trust Co. of New York on acc't of the La Crosse and Milwaukee R. R. Co. sinking fund.*

Dr.

To A. A. Cowdrey, for retainer	$250
To ....do........service	250
	500

And afterwards, on the 19th day of September, 1864, came the Milwaukee and Minnesota Railroad Company, one of the defendants, by Matt. H. Carpenter, its counsel, and filed its objections, by way of demurrer, to the petition of the United States Trust Company herein filed, as follows:

Circuit court United States, district of Wisconsin, in equity.

James T. Soutter, survivor, &c.,
vs.
The La Crosse and Milwaukee Railroad Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendents in the above-entitled cause, and as to the said petition of the United States Trust Company says that the same is not sufficient in law to be answered unto; and shows the following objections against the prayer of the same, by way of grounds of demurrer thereto:

1. The said United States Trust Company has no interest whatever in the fund in question, nor beneficial interest in or under the covenant in the said mortgage.

244 3. That the United States Trust Company is not shown by said petition to be the owner of or interested in any of the bonds secured by said mortgage.

4. That the United States Trust Company is purely a volunteer in all the matters involved in litigation in this cause, and does not move on behalf of any person interested therein.

5. For aught that appears by the said petition, the Milwaukee and Minnesota Railroad Company, the successor of the mortgagor, may have arranged with all the bondholders and their trustees to waive the payment to the sinking fund.

And this defendant prays decree against the said United States Trust Company, for the same cost for resisting this petition that that company prayed, for making it, viz:

Retainer fee	$250 00
Services	250 00
	500 00

And prays attachment to compel the payment thereof; which it submits, if not proper to compel the payment of this sum, is a proper punishment to the petitioner for its impertinence in preferring such a petition.

245 The Milwaukee and Minnesota Railroad Company, by—

MATT. H. CARPENTER,
Its Solicitor and Counsel.

And afterwards, on the 20th day of September, 1864, ordered by the court that it be referred to Henry L. Palmer, esq., to ascertain and report the amounts payable to the trustees under the mortgage for their expenses, including their reasonable counsel fees, and that the bills presented accompany this order to the said commissioner.

And afterwards, on the same day, the petition of the United States Trust Company, and the objections of the defendant, the Milwaukee and Minnesota Railroad Company, thereto, herein filed, came on to be heard, and was argued by counsel, whereupon the court took the same under advisement.

And afterwards, on the 21st day of September, 1864, upon the motion of the complainant in this cause, it is ordered by the court that Hans Crocker, the receiver in this cause, pay over to the complainant or his agent 246 the sum of ten hundred and eighty-six dollars and fifty cents, being the amount of taxed costs in the Supreme Court of the United States, on the appeal of this cause, and the further sum of forty-two dollars, being the amout paid by complainant for printing brief.

And afterwards, on the 26th day of September, 1864, came the complainant, by his counsel and filed copy of the power of attorney in this cause to Timothy H. Porter, and of the substitution of Russell Sage as attorney in place of said Porter, and the affidavit of said Russell Sage, as follows:

247 *Affidavit of Russell Sage.*

U. S. circuit court, district of Wisconsin.

James T. Soutter, surviving trustee,
vs.
La Crosse and Milwaukee R. R. and others.

City of Milwaukee, *Sept.* 26*th*, 1864.

Russell Sage, being duly sworn, says that the paper hereto annexed, marked "A," is a true copy of the original power of attorney, which is in his possession, executed by James T. Soutter, the complainant in the above-entitled case, to Timothy H. Porter, esq., and that the annexed paper, marked "B," is a true copy of a power of substitution to the above-named power of attorney, the original of which power of substitution is in his, the affiant's, possession.

RUSSELL SAGE.

Subscribed and sworn before me Sept. 26th, 1864.

A. SCOTT SLOAN, *Clerk.*

[Revenue stamp, 25 cents.]

248 "A."

Know all men by these presents that I, James T. Soutter, surviving trustee under the deed of trust below described, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Timothy H. Porter, esquire, of the city and State of New York, my true and lawful attorney for me, and in my name, place, and stead, to do each and every act and thing that I may lawfully do under a deed of trust made by the La Crosse and Milwaukee Railroad Company, dated August 17, 1857, to Greene C. Bronson and myself, in trust for the uses and purposes therein named, which is duly recorded in the office of the secretary of state for the State of Wisconsin, to which reference is here made.

And I hereby expressly revoke the power of attorney given by Greene C. Bronson and myself to Francis A. Palmer and Prentis Dow, dated Novem-

1837

ber 1st, 1859, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done, in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with
249 full power of substitution and revocation, hereby satisfying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 28th day of December, in the year one thousand eight hundred and sixty-three.

(Signed) JAMES T. SOUTTER, [SEAL.]
Surviving Trustee.

Sealed and delivered in presence of—
C. G. GREENE.
Z'CH PETITPIERRE.

CONSULATE OF THE UNITED STATES OF AMERICA, *Paris, France.*

Be it known that on the 29th day of December, one thousand eight hundred and sixty-three, before me John Bigelow, consul of the United States of America, at Paris, in the empire of France, personally appeared James T. Soutter, known to me to be the person named in and who executed the written instrument, and acknowledged the execution thereof, for the
250 uses, and purposes therein mentioned.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal of office the day and year above writren.

JOHN BIGELOW, *U. S. Consul.*

"B."

Copy of power of attorney substituting Russell Sage in place of Timothy H. Porter.

United States circuit court, district of Wisconsin.

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
LA CROSSE AND MILWAUKEE R. R. COMPANY and others.

Substituting Russell Sage in place of T. H. Porter, in power of att'y dated Dec. 28th, 1863.

I hereby substitute, delegate, and appoint Hon. Russell Sage to be the attorney of James T. Soutter, surviving trustee, in the management of the above-entitled cause, and in all other matters pertaining thereto, as fully as I am authorized to do by virtue of a power of attorney made and
251 delivered to me by said James T. Soutter, bearing date Dec. 28th, 1863. It is expressly understood and agreed that said Sage has no power or authority to make either myself or the said James T. Soutter in any way personally liable for any damage, loss, cost, or charges of any kind.

New York, Sept. 21st, 1864.

TIMOTHY H. PORTER. [L. S.]

Signed in presence of—
F. P. JAMES.

[Fifty cents U. S. revenue stamp, cancelled.]

And afterwards, on the 26th day of September, 1864, came Mr. Brown, the solicitor for complainant, and on his motion it is ordered by the court that the name of Mr. Brown, be, and the same is hereby, stricken from this cause as solicitor.

252 And afterwards, on the 27th day of September, 1864, came the Milwaukee and Minnesota Railroad Company, by its counsel, Mr. Carpenter, and filed its petition and affidavit for an order requiring the receiver in this cause to pay into court all the moneys in his hands, as per said petition on file, as follows:

United States circuit court, district of Wisconsin, in equity.

James T. Soutter, surviving trustee,
vs.
The La Crosse and Milwaukee Railroad Company and others.

To the judges of said court:

The Milwaukee and Minnesota Railroad Company respectfully represents that by the accounts filed by the receiver before the court, now referred to the auditor, it appears that the Milwaukee and St. Paul Railway Company admit the possession of over one hundred and forty-three thousand dollars; and that, too, after charging one hundred and sixty-six thousand dollars for the use of the rolling stock claimed to be owned by this company.

253 Your petitioner respectfully prays that an order may be made, requiring the receiver to pay into court all the money in his hands in this cause, and that the same may be applied to the payment of the interest due in this cause.

Milwaukee and Minnesota Railroad Company, by—
MATT. H. CARPENTER, *Solicitor.*

District of Wisconsin, *ss:*

Austin Gunnison, being first duly sworn, on oath says that he has read the foregoing, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 27th day of September, A. D. 1864.
A. SCOTT SLOAN,
Clerk ct. court, U. S. Dist. Wis.

254 And afterwards, on the same day, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, filed its petition and affidavit for the removal of Hans Crocker, esq., as receiver in this cause and for other purposes, as per said petition on file, as follows:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

James T. Soutter, survivor, &c., trustee,
vs.
The La Crosse and Milwaukee Railroad Company and others.

To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin, in equity:

Your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, humbly petitioning your honors, respectfully represents:

1853

255 That the La Crosse and Milwaukee Railroad Company was, from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon, and that a large sum of said interest, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers
256 to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in the payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds, respectively, attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said oompany did, on the 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of land which then were or thereafter might be or constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built, or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might
257 thereafter be procured for or used in connection with such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and, as the plaintiff says on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust, hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned; and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed, and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action, of whatsoever nature, which might be owned, or in which said company might have an interest, on such day as such company might first make default in the payment of the rest or principal, or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter, the said Barnes caused said supplementary mortgage to be recorded, as in the same offices as the said first-named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth, a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes, are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2.

258 That immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold and the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to said residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by *bona fide* purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter mentioned. That about the 1st of Feb., A. D. 1859, the said company having made the default in the payment of, or part of, the interest due on said bonds secured as aforesaid, the said Wm. Barnes, in pursuance of the provisions of the laws of the State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that

behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same, and that said mortgages thus became and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then
259 in force; and that said Barnes, by virtue of said purchase and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds, secured by said mortgage; and that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted its business, under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became and ever since have continued a corporation under and by virtue of the laws of said State, capable of sueing and being sued; and that said Milwaukee and Minnesota Railroad Company, immediately thereafter, entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale. That said bondholders at said new organization elected and chose the following-named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russel Sage, N. J. Emmons, Hans Crocker, William E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and — Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company nor any subsequent incumbrancer or incumbrancers, nor any other person or persons, did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said
260 Barnes, as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were:

prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the La Crosse and Milwaukee Railroad Company, and purchasers at foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company with intent to hinder, delay, or defraud its creditors, and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated, and has the right to correct and enforce all actions and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company, and conveyed by said trust deeds to said Barnes, or either of them.

That the La Crosse and Milwaukee railroad, so called, extends from Milwaukee to La Crosse; that that portion of said road lying between Milwaukee and Portage City is called the eastern division of said road, and that that part of the same lying between Portage City and La Crosse is called the western division of said road.

That before the making and delivery of either of the said mortgages
261 to the said Barnes, as hereinbefore stated, the said La Crosse and Milwaukee Railroad Company made, executed, and delivered to one Francis A. Palmer, as trustee, a certain mortgage or deed of trust, dated June 30th, A. D. 1854, and a certain mortgage or deed of trust supplementary thereto, dated February 18th, A. D. 1856, upon the railroad from Milwaukee to Portage City, (which is known as the eastern division of the La Crosse and Milwaukee railroad,) together with the rolling stock and franchises of the said company belonging and appertaining to said eastern division, which said mortgages or deeds of trust are hereto attached and marked "Exhibit No. 3" and "Exhibit No. 4," and made a part of this petition; and that the said mortgages or deeds of trust spoken of together are called the Palmer mortgage, and are the first lien or incumbrance by mortgage upon any portion of the said La Crosse and Milwaukee railroad, and the rolling stock and franchises, or any part thereof, of the said La Crosse and Milwaukee Railroad Company; and that the bonds mentioned in and secured by said Palmer mortgage are now outstanding in the hands of *bona fide* holders, to the amount of about nine hundred thousand dollars; and said Palmer mortgage is a first and valid lien and incumbrance upon the premises therein described to the amount aforesaid, and no proceedings have ever been had to foreclose the same.

Your petitioner further shows that before the making and delivery of either of the said mortgages to the said Barnes, and after the making, delivery, and registration, (according to the laws of the State of Wisconsin,) of the said Palmer mortgage, to wit, on the 31st day of December, in the year A D. 1856, the said La Crosse and Milwaukee Railroad Company made, executed, and delivered to Green C. Bronson, James T. Soutter, and Shephard Knapp, as trustees, a certain mortgage or trust deed of that date, which is called and known as the land grant or western division mortgage, a copy of which is hereto attached, and marked Exhibit No. 5, and made a part of this petition; the premises of which mortgage are called the western division of said La Crosse and Milwaukee railroad and rolling stock and franchises pertaining thereto.

That afterwards, to wit, on the 17th day of August, A. D. 1857, the said La Crosse and Milwaukee Railroad Company made and delivered a certain other mortgage or deed of trust to Greene C. Bronson and James T.
262 Soutter, as trustees, upon the eastern division of said railroad, so called, and the rolling stock and franchises pertaining thereto, to secure certain bonds therein mentioned, to the amount of one million of dollars, a copy of which last-named mortgage is hereto attached, marked Exhibit No. 6, and made a part of this petition, and that the suit was brought to foreclose the same.

That neither the said mortgage to the said Bronson, Soutter, and Knapp upon the said western division, nor the said mortgage to the said Bronson and Soutter upon the eastern division, was made or intended to be made a second mortgage as to the other, upon the rolling stock or franchises of said company; that one mortgage created an incumbrance upon the said western division and the rolling stock and franchises of the said company pertaining to said western division, and the other created an incumbrance upon the said eastern division and the rolling stock and franchises of the said company pertaining to said eastern division; and each of said mortgages, is, as to the other, a first mortgage upon the premises which it describes; and neither of the said mortgages describes and conveys any portion of the premises described and conveyed in the other.

That afterwards, on the 5th day of December, 1859, the said Bronson, Soutter, and Knapp exhibited in the district court of the United States for the district of Wisconsin their bill of complaint against the La Crosse and Milwaukee Railroad Company, your petitioner and others, to foreclose the said mortgage given to them, and called the western division mortgage, a copy of which said bill of complaint, except the exhibits thereto, is hereto attached, and marked Exhibit No. 7; that subpœna was duly issued upon said bill, and proceedings thereupon had to a final decree, as hereinafter stated.

That on the 8th day of December, A. D. 1859, the said Bronson and Soutter exhibited in the district court their bill of complaint in this suit against the said La Crosse and Milwaukee Railroad Company, your petitioner and others, to foreclose the said mortgage given to them upon the said eastern division, a copy of which said last-mentioned bill of complaint, except the exhibits and schedules thereto attached, is hereto attached, and marked Exhibit No. 8, and made a part of this petition; that subpœna issued thereon, and proceedings were had in said district court and in the circuit court of the United States for said district as, hereinafter stated.

That in the said suit, commenced to foreclose the said mortgage
263 upon the said western division, no persons or corporations were made parties defendant except those having or claiming to have an interest in or incumbrance upon the said western division; and that in this suit no persons or corporations were made parties except those having or claiming to have some interest in or lien upon the said eastern division; and that in neither of the said suits did the said complainants therein pray or claim any relief as against the complainants in the other suit; but that the said two foreclosure suits were in all respects, and in every particular, separate and independent suits as the respective mortgages which they respectively were exhibited to foreclose were separate and distinct mortgages upon separate and distinct premises.

That neither the said mortgage upon the western division nor the said mortgage upon the eastern division pretended to enumerate, specify, or particularly describe the amount of rolling stock intended to be thereby conveyed; and that in neither of the suits commenced to foreclose said respective mortgages did the bill of complaint pretend to state, enumerate, or

describe the precise rolling stock or amount of rolling stock included or intended to be included in and conveyed by the mortgage which it was exhibited to foreclose, or which belonged thereto at the time said bill was exhibited. But your petitioner, as owner of the equity of redemption of the said western division, and the rolling stock and franchises pertaining thereto, was made a party defendant to the said bill of complaint, which was exhibited to foreclose the said mortgage on the said western division; and your petitioner in the said western division mortgage foreclosure suit, and as against the complainants in that suit, was the owner of and entitled to reserve, claim, and have all the railroad, rolling stock, and franchises which had belonged to said debtor company, except that which was included in and incumbered by the said western division mortgage. And your petitioner, as the owner of the equity of redemption of the said eastern division and rolling stock and franchises pertaining thereto, was made a party defendant to the bill of complaint in the suit commenced to foreclose the said eastern division mortgage; and in that suit, and as against the complainants in that suit, your orator was the owner of and entitled to claim, reserve, and have
all the railroad, rolling stock, and franchises which had belonged to
264 the said debtor company, except that which was incumbered by and
included in the said eastern division mortgage.

Your petitioner further shows that the said district court in the said suit commenced to foreclose the said western division mortgage, did, on the 11th day of March, A. D. 1861, for the purpose of ascertaining what and what amount of rolling stock was included in and incumbered by the said western division mortgage, make an order of reference to Winfield Smith, a master, and Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report, among other things, the whole amount of rolling stock on the whole railroad from Milwaukee to La Crosse, and to specify the quantity thereof covered by and included in the said western division mortgage, and also the amount thereof covered by and included in the mortgages on the said eastern division—that is, the mortgage to said Palmer, and the said mortgage to said Bronson and Soutter, on said eastern division hereinbefore mentioned; and that on the 21st day of March, A. D. 1861, it was ordered by the judge of said district court that Increase A. Lapham be, and he thereby was, appointed a special master in place of the said Joshua Hathaway, who declined to serve. And your petitioner further shows that afterward, on the 7th day of October, A. D. 1861, the said master and special masters mentioned in said order having heard the proofs of the respective parties of said western division suit in that behalf, did make in said suit their report to said court, among other things, that the whole amount of rolling stock on the whole road, at cost price at the time of the filing of the bill of complaint in the said suit, was five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and that an additional amount of fifty-three thousand six hundred dollars had been purchased after the filing of the said bill of complaint, amounting in the whole to $623,235 78; and that of said rolling stock only forty box cars, amounting at cost price to thirty-one thousand nine hundred and twenty-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, were covered by and included in said western division mortgage; and that the remaining portion of said rolling stock was included in and covered by the said mortgage to said Palmer and the said mortgage to the said Bronson and Soutter,
on said eastern division hereinbefore mentioned. That afterwards, on
265 the 2d day of November, 1861, the said complainants in said western
division mortgage foreclosure suit filed their exceptions therein to

said report, among other things as follows : "Fourth, for that the said masters and special masters have in and by their said report certified that all the rolling stock on said road, except forty box cars, which are specially named in said report, was covered by and included in the first mortgage upon the said railroad and in the mortgage upon the said railroad executed to the said Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857 ; whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement of this suit, amounting to the sum of $53,600) was covered by and included in the mortgage given to the said complainants, and described in the bill of complaint in this cause ; and that said mortgage was a first and prior lien on said rolling stock superior to all other liens ; and that as to the rolling stock purchased by said receiver above mentioned, 150–200 thereof was covered by the mortgage described in the bill of complaint, and that to that extent the complainant's mortgage was a first lien thereon. And that afterward, on the 7th day of January, A. D. 1862, the said district court, having heard and considered the said exception, made an order modifying the said report to the effect that all the rolling stock that was on said road when the receiver was appointed, except the said forty box cars, was declared to be covered by and included in the first mortgage of the road from Milwaukee to Portage City, and that all the rolling stock on said road that had been purchased or procured while the said court had held possession by its receiver, costing 147,942 dollars and 63 cents, be applied to said first mortgage on said eastern division and the said western division mortgage in proportion to the net revenues of the said eastern division and the said western division, respectively, from the time of the appointment of the said receiver. That afterwards, to wit, on the 13th day of January, A. D. 1862, the said district court in said western division mortgage foreclosure suit made a final decree therein, foreclosing said western division mortgage, and decreeing a sale of the mortgaged premises in the said mortgage described, and declaring that all the said rolling stock on the whole of said road, except the said
forty box cars and the said proportion of rolling stock purchased by
266 the receiver hereinbefore mentioned, belonged to and was covered by
the mortgages on the said eastern division. That the said Bronson, Soutter, and Knapp did not appeal from the said final decree of said district court in said western division mortgage foreclosure suit, but, on the contrary thereof, proceeded to execute the same by a sale of the said mortgaged premises, as determined by the said report, modification of report, and final decree in said cause, as hereinbefore stated ; and that a sale thereof was had, under the direction of Darius C. Jackson, marshal of the United States for the said district, on the 25th day of April, A. D. 1863 ; which sale was afterwards, to wit, on the 5th day of May, A. D. 1863, confirmed by order of the said district court, as appears of record in said cause, but was never confirmed by this court.

Your petitioner further shows that a copy of said order of reference is hereto attached, marked Exhibit No. 9 ; that a copy of said report is hereto attached, and marked Exhibit No. 10 ; that a copy of the said exceptions thereto is hereto attached, and marked Exhibit No. 11 ; that a copy of the said order of said court, modifying said report and overruling the exceptions thereto, is hereto attached, marked Exhibit No. 12 ; that a copy of the said final decree is hereto attached, marked Exhibit No. 13 ; that a copy of said marshal's report of said sale is hereto attached, marked Exhibit No. 14; that a copy of said order of said court confirming said sale is hereto attached, marked Exhibit No. 15. And your petitioner prays that all said exhibits and all exhibits hereto attached may be taken and considered as a part of this petition, with the same effect as if the same were fully set out therein, according to their legal effect.

Your petitioner further shows that immediately after said sale the said William Wallace Pratt and the said William H. White, who were the purchasers at the said mortgage sale, did, or did pretend to, organize a corporation under and in pursuance of the laws of the said State of Wisconsin in that behalf, to take, hold, and operate the said mortgaged premises purchased by them as aforesaid, and did assume and take as the corporate name of the said corporation the name and style "the Milwaukee and St. Paul Railway Company;" and the said Pratt and White, and their associates now claim to be and constitute a corporation under the corporate name last aforesaid, and in that character and capacity pretend to hold and operate the said mortgaged premises so purchased by the said Pratt and White.

Your petitioner further shows that by the proceedings in the said western division mortgage foreclosure suit to a sale and confirmation as
267 hereinbefore stated, (if the same were and are legal and valid and
made by the proper court,) the said Pratt and White acquired, and after the organization of the said Milwaukee and St. Paul Railway Company, that company was entitled to hold, use, and operate the mortgaged premises described in said western division mortgage, as the same had in said suit been determined, as aforesaid—that is, all and singular the several tracts, pieces, or parcels of land which at the date of said decree constituted the site of the road-way, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted a part of the roads of the said La Crosse and Milwaukee Railroad Company, from Madison, by way of Portage City, to the St. Croix River or Lake, between townships 25 and 31, and from Portage City to La Crosse, together with the said forty box cars; and the said proportion of said rolling stock purchased by the said receiver, which by the order of said court modifying the said report and the said final decree in said western division mortgage foreclosure suit, were determined and decreed to belong to and covered by said mortgage, whenever the same should be thereafter legally ascertained or separated from the common stock by negotiation and agreement between the parties; and that the said Pratt and White, or the Milwaukee and St. Paul Railway Company, acquired the same right thereto, and the right to use and operate the same in the same manner that the said La Crosse and Milwaukee Railroad Company could have used and operated the same if said sale had not taken place, and not otherwise.

That no proceedings were ever had in the said western division mortgage foreclosure suit to ascertain the proportion which the net earnings of the said western division mortgaged premises bore to the net earnings of the said eastern division mortgaged premises during the time mentioned in said decree in that behalf; and that no proceedings have ever been had at law or in equity to ascertain the same, and that the same are still unascertained and unknown; and that therefore it remains to this time unascertained and undetermined by the decree of any court, or other competent authority, whether or not any portion of the said rolling stock which was purchased by said receiver as mentioned in said decree was covered by said western division mortgage; and whether or not the said Pratt and White, or the said Milwaukee and St. Paul Railroad Company, acquired by the said sale
and conformation thereof, any portion of the said rolling stock which
268 had been purchased by the said receiver as recited in said order and
decree of said district court in said western division mortgage foreclosure suit; but your petitoner is informed and believes, and thereupon shows, that the said premises included in and incumbered by the said western division mortgage did not from the time of the appointment of the receiver to the

1861

date of the said decree in said western division mortgage foreclosure suit (being the time mentioned in said decree) earn any net revenue whatever within the meaning of said decree; but that, on the contrary thereof, the expense of operating the said western division mortgage premises during the term of time aforesaid, together with the necessary disbursements in that behalf and otherwise made by the receiver by orders of said court in said cause, were more than the whole gross receipts arising from the operation of the same; and that the said Pratt and White, or the said Milwaukee and St. Paul Railway Company, are therefore not entitled to claim any portion of the said rolling stock purchased by said receiver as aforesaid, under and by virtue of the said purchase at the said sale and the confirmation thereof in said suit; that the earnings of the eastern division from the appointment of the receiver to the date of said decree, over the expenses of operating the same, was $566,505 07, and that the earnings of the western division over the expenses of operating the same during the same time was $113,666 32, so that if said decree had reference to net earnings strictly so called, and did not mean to deduct the disbursements in said respective causes from said respective earnings, yet the said Milwaukee and St. Paul company would only be entitled to claim in the proportion of the sums aforesaid.

Your petitioner further shows that in the said western division mortgage foreclosure suit Hans Crocker, esq., was appointed receiver by an order of said court in said suit made on the 18th day of May, 1860, and the supplementary order of said court made on the 7th day of June, 1860, a copy of which order and supplemental order is hereto attached, and marked Exhibit No. 16.

That afterwards the said Hans Crocker was appointed receiver in a certain suit in said district court in equity, in favor of one Sebre Howard against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, defendants, a copy of which said order of appointment, and the modification thereof, is hereto attached and marked Exhibit No. 17. That afterwards, on the 6th day of July, A. D. 1860, the said Hans Crocker was also appointed receiver in the eastern division mortgage foreclosure suit, by an order made by the said court in said cause, a copy of which is hereto attached, and marked Exhibit No. 18.

Your petitioner further shows that on the 11th day of March, 1861, the said district court in the said eastern division mortgage foreclosure suit, in which said Bronson and said Soutter were complainants, made a certain order of reference therein, a copy of which is hereto attached, and marked Exhibit No. 19, which last-mentioned order was modified by an order made by the judge of said court on the 21st day of March, A. D. 1861, as follows, viz: "Ordered by the judge that Increase A. Lapham be, and hereby is, appointed a special master in this case in the place of Joshua Hathaway,
269 who declined serving." That afterwards, on the 7th day of October, 1861, the said master and special masters made their report to said court in said last-named suit, a copy of which is hereto attached, and marked Exhibit No. 20. And afterwards, to wit, on the 7th day of January, 1862, certain exceptions having been made to said report by the complainant, a copy of which is hereto attached, and marked Exhibit No 20½, the said district court made an order in said cause confirming the said report of the said masters as to the said forty box cars which said masters had reported were covered by said western division mortgage, and modifying said report by determining that a portion of the rolling stock purchased by the receiver corresponding to the proportion of the net earnings of the said western division should be applied to the said western division mortgage, a copy of which last-named order of said court is hereto attached, and marked Exhibit No. 21. And that afterwards, to wit, on the 13th day of January, A. D. 1862,

the said district court made a final decree in said last-named suit, foreclosing the said eastern division mortgage and ordering a sale of its premises, a copy of which decree is hereto attached, marked Exhibit No. 22; but your orator shows that the said Bronson and Soutter, complainants in said suit, appealed from said decree last mentioned to the Supreme Court of the United States, and that said Supreme Court, on the hearing of said appeal at the last term of said Supreme Court, reversed said decree of said district court and remanded the said cause to this court for further proceedings, and that the said suit is still pending and undetermined in this court, and that no final decree has as yet been entered therein; and that the said Hans Crocker still continues receiver in this suit under and by virtue of the said order of appointment made therein, a copy of which is hereto attached, marked Exhibit No. 18; and that your petitioner is thus prevented from taking actual possession of the said railroad, rolling stock, and franchises, of which it is the owner, as hereinbefore stated, or bringing suit at law therefor, and is remediless in the premises, except by the aid of this court.

Your petitioner further shows that the said Hans Crocker still remains receiver, or claims to so remain, in the said Howard suit hereinbefore mentioned, under and by virtue of the order of appointment, a copy of which is Exhibit No. 17 hereto

Your petitioner further shows that the said Howard suit hereinbefore mentioned was commenced by the exhibiting of a bill of complaint in equity
to enforce payment and satisfaction of a certain judgment in favor of
270 the said Howard against the said La Crosse and Milwaukee Railroad
Company, which judgment was subsequent in date to the said mortgages to the said Barnes, and that if said judgment was ever a lien upon said railroad, rolling stock, or franchises, such lien was extinguished thereon by the said foreclosure of the said Barnes mortgage. And your petitioner is advised and insists that the prior appointment of said Hans Crocker as receiver in the said western division mortgage foreclosure suit had the effect in law to render inoperative the said appointment in the said Howard case in relation to all the railroad, rolling stock, and franchises, of which the said Crocker was appointed receiver in the said western division mortgage foreclosure suit; and that the appointment of the said Crocker as receiver in the said eastern division mortgage foreclosure suit had the effect in law to suspend the appointment of the said Crocker as receiver in the said Howard case, in relation to all the property of which the said Crocker was appointed receiver in the said eastern division mortgage foreclosure suit; and that the property, railroad, rolling stock, and franchises of which said Crocker was appointed receiver in said foreclosure suits was the same, and all of the railroad stock, franchise, and other things of which said Crocker was appointed receiver in said Howard case.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company, designing and intending to injure, oppress, and defraud your orator, fraudulently and falsely claims and pretends that it, as a corporation organized under and in pursuance of the laws of the State of Wisconsin, by said Pratt and White, purchasers at said foreclosure suit sale, as hereinbefore mentioned, has by virtue of said sale and confirmation thereof, and the said organization of the said company, become (as against your petitioner) the owner in fee of all the rolling stock which was upon said railroad at the time of the appointment of the receiver, and all of the said rolling stock purchased by the receiver, and all the franchises which belonged to the said La Crosse and Milwaukee Railroad Company; and has acquired the right (as against your petitioner) to use and operate the eastern division of the said road as well as the said western division, and all the said rolling stock and franchises, and to take and receive, and keep as its own, all the earnings, income, and revenue thereof, as against your petitioner.

1863

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company, fraudulently combining and confederating with Hans Crocker, 271 receiver as aforesaid, it was fraudulently and corruptly arranged and agreed by and between the Milwaukee and St. Paul Railway Company and the said Hans Crocker, esq., receiver as aforesaid, on the 12th day of June, 1863, that the said Milwaukee and St. Paul Railway Company should enter upon and take possession of the said eastern division of said railroad and all the rolling stock and franchises hereinbefore mentioned, and use and operate the same, and receive the rents, revenues, tolls and income arising therefrom, in defiance of law and in fraud of the rights of your petitioner; and the Hon. Andrew G. Miller, as judge of the said district court, sitting in said court, on the 12th day of June, 1863, made for and in the name of said court an order in the said eastern division mortgage foreclosure suit, which was then pending in this court and not in said district court, a copy of which order is hereto attached, and marked Exhibit No. 24. And the said Milwaukee and St. Paul Railway Company, on the said 12th day of June, A. D. 1863, procured a similar order to be entered by this court, held by the said A. G. Miller, as judge thereof, in the absence of the presiding judge of said court, in the said Howard suit, although the said Milwaukee and St. Paul Railway Company was not a party to said suit. And that said Milwaukee and St. Paul Railway Company afterwards, on the 12th day of June, A. D. 1863, under color of said orders and in fraud of the rights of your petitioner, and by the acquiescence and consent of the said Hans Crocker, entered into possession of the said eastern division, and all the said rolling stock and franchises pertaining thereto and belonging to your petitioner, as hereinbefore stated, and ever since that time has operated said eastern division rolling stock and franchises, and received the revenues and tolls arising therefrom, and is still operating the same and receiving the said revenues and tolls arising therefrom.

And your petitioner further shows that ever since the 12th day of June, A. D. 1863, to this day, the said Milwaukee and St. Paul Railway Company has used the rolling stock belonging to your petitioner as herein stated, upon the said western division of said railroad, and is now so using the same thereon; and that the said Milwaukee and St. Paul Railway Company ought to account to and with your petitioner, and ought in equity to pay over to the receiver in this suit, or to your petitioner, a reasonable rent for your petitioners' said rolling stock used upon said western division, which reasonable rent your petitioner on information and belief shows will exceed the sum of two hundred thousand dollars.

272 Your petitioner further shows that the said Milwaukee and St. Paul Railway Company being in possession of said eastern division rolling stock and franchises on the 28th day of April, 1864, the Supreme Court of the United States having before that decided in the said appeal pending in said Supreme Court, that the said order of the said district court made in this suit on the 12th day of June, 1863, as hereinbefore stated, was absolutely void for the reason that said suit was pending in this court and not in said district court where said order was pretended to be made. This court, on the 28th of April, 1864, present the Honorable Samuel F. Miller, presiding judge of said court, and the said Andrew G. Miller, judge of said court, made an order in said eastern division mortgage foreclosure suit vacating said order of June 12, 1863, a copy of which order last made is hereto attached, marked Exhibit No. 25; and on the same day this court made a similar order in said Howard case, vacating the said order made therein as aforesaid on the 12th day of June, 1863. And your orator shows that it thereupon became and was the duty of the said Milwaukee and St. Paul Railway Company to surrender possession of said eastern division of said railroad

and the rolling stock and franchises thereto pertaining, as aforesaid, to the said Hans Crocker, receiver ; and that it then and there became and was the duty of the said Hans Crocker, as receiver in said this suit, to take possession of said eastern division and the rolling stock and franchises pertaining thereto, and thereafter to operate the same and take the revenues, rents, and tolls therefrom as receiver as last aforesaid. But your petitioner shows that the said Milwaukee and St. Paul Railway Company, combining and colluding with the said Crocker as aforesaid, and sure of the acquiesence and consent of the said Crocker in violation of his duty as receiver as aforesaid, has, ever since the said orders were made by this court in the said Howard cause and in this suit on the 28th day of April, 1864, as aforesaid, continued to use and operate the said eastern division of the said railroad and the said rolling stock and franchises pertaining thereto, as hereinbefore stated, and received the rents, revenues, and tolls arising therefrom, and is still operating the same, and receiving the rents, revenues and tolls arising therefrom, in open and flagrant violation of the said orders of this court, in contempt of the authority of this court, and in fraud of the rights of your petitioner, in the same manner that it did operate the same and receive said revenues
prior to the said orders of the 28th day of April, A. D. 1864.

273 Your petitioner further shows that the said Hans Crocker, receiver as
aforesaid, has acquiesced and does acquiesce in the said possession of said eastern division and the rolling stock and franchises pertaining thereto, and the receiving the revenues thereof by the said Milwaukee and St. Paul Railway Company as aforesaid, since the 28th day of April, 1864 ; and that on the 28th of June, 1864, the said Hans Crocker, as receiver in this suit, filed his report in this court in said cause, showing that he did not operate said eastern division and the rolling stock and franchises pertaining thereto, or receive the revenues therefrom, as it was his duty to do, a copy of which report is hereto attached, and marked Exhibit No. 26.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company is in possession of and claim to own a railroad from the Watertown Junction, so called, (a point about 14 miles west of the city of Milwaukee,) to Columbus, in said district ; and is now building a line of railroad from said Milwaukee to said Watertown Junction, and has built a line of railroad from said Columbus to the City of Portage, the eastern terminus of said western division of said La Crosse and Milwaukee railroad ; thus creating a line of railroad from Portage City to the city of Milwaukee independent of and to be used in competition with the said eastern division from Portage City to Milwaukee.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company falsely and fraudulently gives out and pretends that, by virtue of the said purchase by the said Pratt and White, and the organization by them of the Milwakee and St. Paul Railway Company, as aforesaid, the said last-named company has acquired and possesses the right to separate and disconnect the said railroad from Portage City to La Crosse from the said eastern division from Portage City to Milwaukee, and to use the said western division independent of the said eastern division, and to feed its rival and competing line from said Portage City to Milwaukee, by way of Columbus and Watertown Junction as aforesaid ; and that the said Milwaukee and St. Paul Railway Company on the completion of the said competing line of railroad from Portage City, by way of Columbus, to Watertown Junction has made arrangements to run cars over the Milwaukee and Prairie du Chien Railroad from Watertown Junction to Milwaukee, and has transferred the said rolling stock belonging to your petitioner, as aforesaid, from said eastern division of said railroad, and is now using the same upon said
274 western division from La Crosse to the City of Portage, and thence

over the said competing line of road to the City of Milwaukee, by way of Columbus and Watertown Junction, in fraud of your petitioner's rights, and to your petitioner's irremediable injury; and that the said eastern division of the said railroad as now operated yields little or no revenue, and if so continued to be operated will be rendered worthless to your petitioner.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company, its officers and stockholders, and the said Hans Crocker, in fraudulent combination and collusion in that behalf, give out and pretend that the rights of the said Milwaukee and St. Paul Railway Company and your petitioner, respectively, as to the said rolling stock, are left so vague and indefinite by the said proceedings and decree in the said western division mortgage foreclosure suits, that said Milwaukee and St. Paul Railway Company (being in possession of the whole thereof as hereinbefore stated) can dictate terms to and force a settlement with your petitioner as the said Milwaukee and St. Paul Railway Company shall see fit; and that the order and proceedings in said western division mortgage foreclosure suit were purposely made and rendered vague and indefinite, as aforesaid for the purpose of compelling your petitioner to settle with the said purchasers at the sale of the said western division foreclosure suit, upon such terms as might be dictated by them. And your petitioner further shows that the said illegal and fraudulent possession of your petitioner's railroad, rolling stock, and franchises by the said Milwaukee and St. Paul Railway Company, as hereinbefore stated, has been and is a great oppression and injury to your petitioner and its stockholders, and has had the effect, and still has the effect, to depress the price of your petitioner's stock in market, and embarrass your petitioner in carrying on its legitimate and proper business and raising the necessary funds with which to redeem said road, rolling stock, and franchises from existing incumbrances thereon; and that the said Milwaukee and St. Paul Railway Company and the said Crocker, in corrupt and fraudulent collusion in that behalf, have sought and are seeking thereby fraudulently and corruptly to injure and oppress your petitioner.

275 Your petitioner further shows that the said rolling stock is being greatly lessened in value daily by said unlawful use thereof by said Milwaukee and St. Paul Railway Company; and that it is property of a character certain to be depreciated in value by use, and that the said Milwaukee and St. Paul Railway Company is using the same in such manner as to greatly injure and depreciate its value, in fraud of your petitioner's rights in the premises.

Your petitioner further shows that the rolling stock that was on said railroad when said receiver was first appointed as aforesaid, except forty box cars hereinbefore mentioned, is of the value of over five hundred thousand dollars; and that the rolling stock purchased by said receiver, as hereinbefore stated, is of the value of more than one hundred thousand dollars.

276 Your petition further shows that before the respective orders of reference in said respective causes hereinbefore set forth, the judge of said district court delivered and read in court, and afterwards caused to be printed and published, his opinion in said respective causes, a copy of which is hereto attached, and marked Exhibit No. 27; and that after said orders of reference, and after the hearing of the exceptions to said respective reports of said masters, the judge of said district court made, delivered in court, and afterwards published and printed his opinion in said causes, a copy of which is hereto attached, and marked Exhibit No. 28.

Your petitioner further shows that before Hon. H. L. Palmer, auditor appointed in this cause to report on the receiver's accounts, the said Hans Crocker, receiver, was examined on oath, and, among other things, testified as to the present occupation of said eastern division and rolling stock on and the rolling stock and franchises thereto pertaining, as aforesaid, to the said Hans Crocker, receiver ; and that it then and there became and was the duty of the said Hans Crocker, as receiver in said this suit, to take possession of said eastern division and the rolling stock and franchises pertaining thereto, and thereafter to operate the same and take the revenues, rents, and tolls therefrom as receiver as last aforesaid. But your petitioner shows that the said Milwaukee and St. Paul Railway Company, combining and colluding with the said Crocker as aforesaid, and sure of the acquiesence and consent of the said Crocker in violation of his duty as receiver as aforesaid, has, ever since the said orders were made by this court in the said Howard cause and in this suit on the 28th day of April, 1864, as aforesaid, continued to use and operate the said eastern division of the said railroad and the said rolling stock and franchises pertaining thereto, as hereinbefore stated, and received the rents, revenues, and tolls arising therefrom, and is still operating the same, and receiving the rents, revenues and tolls arising therefrom, in open and flagrant violation of the said orders of this court, in contempt of the authority of this court, and in fraud of the rights of your petitioner, in the same manner that it did operate the same and receive said revenues prior to the said orders of the 28th day of April, A. D. 1864.

273 Your petitioner further shows that the said Hans Crocker, receiver as aforesaid, has acquiesced and does acquiesce in the said possession of said eastern division and the rolling stock and franchises pertaining thereto, and the receiving the revenues thereof by the said Milwaukee and St. Paul Railway Company as aforesaid, since the 28th day of April, 1864 ; and that on the 28th of June, 1864, the said Hans Crocker, as receiver in this suit, filed his report in this court in said cause, showing that he did not operate said eastern division and the rolling stock and franchises pertaining thereto, or receive the revenues therefrom, as it was his duty to do, a copy of which report is hereto attached, and marked Exhibit No. 26.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company is in possession of and claim to own a railroad from the Watertown Junction, so called, (a point about 14 miles west of the city of Milwaukee,) to Columbus, in said district ; and is now building a line of railroad from said Milwaukee to said Watertown Junction, and has built a line of railroad from said Columbus to the City of Portage, the eastern terminus of said western division of said La Crosse and Milwaukee railroad ; thus creating a line of railroad from Portage City to the city of Milwaukee independent of and to be used in competition with the said eastern division from Portage City to Milwaukee.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company falsely and fraudulently gives out and pretends that, by virtue of the said purchase by the said Pratt and White, and the organization by them of the Milwakee and St. Paul Railway Company, as aforesaid, the said last-named company has acquired and possesses the right to separate and disconnect the said railroad from Portage City to La Crosse from the said eastern division from Portage City to Milwaukee, and to use the said western division independent of the said eastern division, and to feed its rival and competing line from said Portage City to Milwaukee, by way of Columbus and Watertown Junction as aforesaid ; and that the said Milwaukee and St. Paul Railway Company on the completion of the said competing line of railroad from Portage City, by way of Columbus, to Watertown Junction has made arrangements to run cars over the Milwaukee and Prairie du Chien Railroad from Watertown Junction to Milwaukee, and has transferred the said rolling stock belonging to your petitioner, as aforesaid, from said eastern division of said railroad, and is now using the same upon said
274 western division from La Crosse to the City of Portage, and thence

over the said competing line of road to the City of Milwaukee, by way of Columbus and Watertown Junction, in fraud of your petitioner's rights, and to your petitioner's irremediable injury; and that the said eastern division of the said railroad as now operated yields little or no revenue, and if so continued to be operated will be rendered worthless to your petitioner.

Your petitioner further shows that the said Milwaukee and St. Paul Railway Company, its officers and stockholders, and the said Hans Crocker, in fraudulent combination and collusion in that behalf, give out and pretend that the rights of the said Milwaukee and St. Paul Railway Company and your petitioner, respectively, as to the said rolling stock, are left so vague and indefinite by the said proceedings and decree in the said western division mortgage foreclosure suits, that said Milwaukee and St. Paul Railway Company (being in possession of the whole thereof as hereinbefore stated) can dictate terms to and force a settlement with your petitioner as the said Milwaukee and St. Paul Railway Company shall see fit; and that the order and proceedings in said western division mortgage foreclosure suit were purposely made and rendered vague and indefinite, as aforesaid for the purpose of compelling your petitioner to settle with the said purchasers at the sale of the said western division foreclosure suit, upon such terms as might be dictated by them. And your petitioner further shows that the said illegal and fraudulent possession of your petitioner's railroad, rolling stock, and franchises by the said Milwaukee and St. Paul Railway Company, as hereinbefore stated, has been and is a great oppression and injury to your petitioner and its stockholders, and has had the effect, and still has the effect, to depress the price of your petitioner's stock in market, and embarrass your petitioner in carrying on its legitimate and proper business and raising the necessary funds with which to redeem said road, rolling stock, and franchises from existing incumbrances thereon; and that the said Milwaukee and St. Paul Railway Company and the said Crocker, in corrupt and fraudulent collusion in that behalf, have sought and are seeking thereby fraudulently and corruptly to injure and oppress your petitioner.

275 Your petitioner further shows that the said rolling stock is being greatly lessened in value daily by said unlawful use thereof by said Milwaukee and St. Paul Railway Company; and that it is property of a character certain to be depreciated in value by use, and that the said Milwaukee and St. Paul Railway Company is using the same in such manner as to greatly injure and depreciate its value, in fraud of your petitioner's rights in the premises.

Your petitioner further shows that the rolling stock that was on said railroad when said receiver was first appointed as aforesaid, except forty box cars hereinbefore mentioned, is of the value of over five hundred thousand dollars; and that the rolling stock purchased by said receiver, as hereinbefore stated, is of the value of more than one hundred thousand dollars.

276 Your petition further shows that before the respective orders of reference in said respective causes hereinbefore set forth, the judge of said district court delivered and read in court, and afterwards caused to be printed and published, his opinion in said respective causes, a copy of which is hereto attached, and marked Exhibit No. 27; and that after said orders of reference, and after the hearing of the exceptions to said respective reports of said masters, the judge of said district court made, delivered in court, and afterwards published and printed his opinion in said causes, a copy of which is hereto attached, and marked Exhibit No. 28.

Your petitioner further shows that before Hon. H. L. Palmer, auditor appointed in this cause to report on the receiver's accounts, the said Hans Crocker, receiver, was examined on oath, and, among other things, testified as to the present occupation of said eastern division and rolling stock on the 10th day of September, A. D. 1864, that the said examination of said Crocker was taken by question and answer; and a copy thereof taken from the notes of said auditor, is hereto attached, and marked Exhibit No. 29.

277 That the said Crocker afterwards furnished to said auditor the statement of the earnings of the said eastern division for ten days before and ten days after the said Milwaukee and St. Paul company completed their said completing line of road, as follows, viz:

"Statement of earnings of eastern division of the La C. & M. R. R., from Milwaukee to Portage, from August 20, 1864, to August 31, 1864, inclusive, and from 1st September to 10th September, 1864, inclusive.

Freight during last 10 days of August rate of 1,709 50 per day	$17,095 60
Passengers, same time rate of 1,820 50 per day	18,205 60
Freight, 10 days September, rate of $1,355 per day	13,550 10
Passengers same time, rate $1,219 60 per day	12,196 05

Your petitioner further shows that the only bond given by the said Hans Crocker, receiver, was given in the said Howard case, and that the said receiver has given no bond whatever in this cause, as your petitioner is informed and believes; that the bond given by said receiver in said Howard case was only in the sum of fifty thousand dollars.

278 Your petitioner further shows that the said district court made an order in said western division cause, on the 7th day of May, A. D. 1863, on a petition of the said Milwaukee and St. Paul Railway Company, which petition is set out in said order, a copy of which order is hereto attached, and marked Exhibit 23.

Your petitioner further shows that the said La Crosse and Milwaukee Railroad Company made another mortgage on a part of the said eastern division of said railroad a copy of which is hereto attached, and marked Exhibit 30.

That said district court made an order in said western division cause on the 12th day of June, A. D. 1863, a copy of which is hereto attached, and marked Exhibit No. 24½.

That the said receiver made and filed his reports as such receiver for the months of June and July, A. D. 1864, copies of which are hereto attached, and marked, respectively, Exhibit No. 31 and 32.

279 Your petitioner therefore prays your honors in said court for relief in the premises as follows, to wit:

1. That the said Hans Crocker may be removed from said office of receiver, and that some suitable and trustworthy person may be appointed receiver in this cause, or that your petitioner may be appointed receiver therein.

2. That an order may be made and entered in this cause directing and commanding the said receiver to take possession of all the said rolling stock that was on the La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except the said forty box cars hereinbefore described by their numbers, and safely keep and operate the same upon the eastern division.

3. That an order may be made in this cause directing the receiver in this cause to take possession of all the rolling stock purchased and procured by the receiver previous to the date of said decrees, and that he safely kept the same, and operate the same upon the eastern division, or upon both divisions, bringing the earnings thereof into court, until it shall be ascertained by proper proceedings how much of the same belongs to said purchasers, under said western division foreclosure decree, according to the basis fixed by that decree.

4. That an order may be made in this cause directing and commanding the said Milwaukee and St. Paul Railway Company to deliver over 280 to the receiver of this court in this cause all the said rolling stock that was on said La Crosse and Milwaukee railroad when the said receiver was appointed, except said forty box cars.

5. That an order may be made in this cause directing and commanding said Milwaukee and St. Paul Railway Company to deliver over to the receiver of this court in this cause all the said rolling stock, purchased and procured by said receiver, mentioned in said decree, until the further order of this court.

6. That the said Hans Crocker, receiver as aforesaid, may be attached and punished for contempt of this court, for disobeying, as hereinbefore mentioned, the orders of this court, made on the 28th day of April, A. D. 1864, as hereinbefore mentioned.

7. That in case your honors shall be of opinion that the said Hans Crocker is a proper and suitable person to be continued in said office as receiver, or that his interests require him to be so continued, may it please your honors to make an order in this cause directing the said Crocker to give further and additional security, by way of bond or otherwise, in such amount as to your honors may seem reasonable, to be approved by this court, for the faithful performance of his duties as such receiver; and that said Crocker pay into court monthly all funds that may come into his hands as 281 receiver as aforesaid.

8. And may it please your honors in case you shall be of opinion that your petitioner is not entitled to all the relief hereinbefore prayed, to give unto your petitioner so much or such part thereof, or such part thereof, or such other, or different, or further relief, as to your honors may seem just, and as shall be agreeable to equity and good conscience. And your petitioner will ever pray, &c.

The Milwaukee and Minnesota Railroad Company, by—

MATT H. CARPENTER, *its Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being first duly sworn, on oath, says that he has heard, read, and knows the contents of the foregoing petition, and believes the same to be true. That he has examined the exhibits attached thereto, and has compared the same with there respective originals, or with duly certified copies thereof, or with printed certified copies thereof, as printed in the Supreme Court of the United States on the appeal of this cause in that court, and that the said exhibits hereto attached are true copies of said 282 originals, or of said certified copies, or of said printed certified copies, except Exhibit 27 and Exhibit 29, which are printed copies of the respective opinions of said district judge, as the same were printed and published by said judge, or with his permission, and except said Exhibit 28.

This affiant further says that all or nearly all of the rolling stock that was on the La Crosse and Milwaukee railroad when said receiver was appointed, except said forty box cars, has been removed by the Milwaukee and St. Paul Railway Company from said eastern division, and that the same is now used by that company upon the said western division, and upon the road now claimed to be owned and in fact operated by that company, from Portage to Watertown Junction, and thence over the Milwaukee and Prairie du Chien railway to Milwaukee, in competition with said eastern division, and that the rolling stock left by the Milwaukee and St. Paul Railway Company upon the eastern division is greatly inadequate to the proper and profitable operation of said eastern division.

That the said road from Portage City to Columbus is newly constructed and that the running of the said rolling stock upon the same is very injurious to said rolling stock.

This affiant further says that he heard the testimony of said Hans Crocker which is set forth in said Exhibit 28, and that said Exhibit 283 truly sets forth the testimony of said Crocker in that behalf.

This affiant further says that the making, execution, and delivery of the said bonds, mortgages and the foreclosure of the same, and subsequent organization of the Milwaukee and Minnesota Railroad Company, as stated in the foregoing petition, are matters of common and public notoriety. And this affiant further says that he is a director and member of the board of directors of the said Milwaukee and Minnesota Railroad Company, and generally conversant with its affairs.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 27th day of September, A. D. 1864.

JAMES McFARLIN,
Commissioner U. S. circuit court district Wis.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath, says that he is a stockholder and director, and a member of the board of directors of the Milwaukee and Minnesota Railroad Company, and has been its agent and as such has had charge of its interests in the litigation in the several causes in the foregoing petition mentioned.

284 That he has read the foregoing petition, knows its contents, and believes it to be true.

That the several proceedings in the causes mentioned in the foregoing petition are truly and correctly set forth in said petition, as this affiant knows from having had personal care and superintendence of the interests of said company in said causes, and as appears from the records and original papers on file in said causes, which this affiant has frequently examined and with which certified copies thereof this affiant is perfectly familiar.

This affiant further says that Exhibit 28 attached to this petition is an extract from the examination of Hans Crocker on oath, before H. L. Palmer, esq., auditor; that this affiant has copied the same from the minutes of said examination kept by said Palmer, and that the same is a true copy of said minutes; that this affiant was present during the whole or the greater part of the said examination of the said Crocker, and knows that said Exhibit 28, correctly states the testimony of said Crocker on oath.

This affiant further says that said Exhibits 27 and 29, being opinions of said district judge, mentioned in said petition, were printed very soon after were delivered by said judge in said court in said causes with the per-285 mission and under the supervision of the said judge, as this affiant is informed and believes; that this affiant heard said opinions in substance delivered by said judge, in said court, in said causes, and that the same as printed and in said exhibits are substantially and he believes literally correct.

This affiant further says that it is a matter of common and public notoriety in and about Milwaukee that the said Milwaukee and St. Paul Railway Company have taken the said rolling stock that was on the La Crosse and Milwaukee railroad when the receiver was appointed off from the said eastern division; and that the said company is now using the same upon the said western division and upon its new line of road from Portage City to Milwaukee, by way of Columbus, as stated in said petition; and this affiant has himself seen upon the track of the Milwaukee and Prairie du Chien Railway Company at Milwaukee a portion of said stock, and was informed by the persons in charge of the same that it had been run through directly from La Crosse by way of Columbus, to Milwaukee.

This affiant further says that after a careful examination of the accounts of the said receiver in this cause he verily believes that after allowing
286 the said receiver all sums creditable to him in this cause, there is or should be remaining in his hands, applicable to the payment of the interest due in this cause on the complainant's mortgage, more than the sum of three hundred thousand dollars, and that the said receiver has only given bonds in the sum of fifty thousand dollars as this affiant is informed and has learned by an examination of the records and papers in the several causes in the foregoing petition mentioned.

A. FLEMING.

Subscribed and sworn before me this 27th day of September, A. D. 1864.

JAMES McFARLIN,
Commissioner U. S. Circuit Court, District of Wisconsin.

287 EXHIBIT No. 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

United States of America, State of Wisconsin.

No. —. $———.

Know all men by these presents that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof the sum of —— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany,
288 the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually,

with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

———— ————, *President.*
———— ————, *Secretary.*

Registered and countersigned this , 185 .
———— ————, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar, paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the 289 property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to liens already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect 290 to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But, before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to
291 the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, and expenses and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully identified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars. With such sum as, from time to time, the same shall be paid the said trustee shall, from time to time, purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto, provided such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all

1873

the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had
292 been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

[SEAL.] In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—
N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company by N. P. Stanton, president, and as to William Barnes, the said trustee—
CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of the said La Crosse and Milwaukee Railroad Company—
EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president, as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board
293 of directors thereof.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.
EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said intrument freely for the purposes therein stated; and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on the seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned. And the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-
294 named corporation, and that the seal affixed to the above instrumen
is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

EXHIBIT NO. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

1875-

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows :

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield ; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers for six sections in width on each side of the said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the
295 State of Wisconsin for the use and purpose aforesaid, provided that the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads; provided further, that the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; and provided further, that any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC 2. *And be it further enacted,* That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted,* That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted,* That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so, from time to time, until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

Sec. 5. *And be it further enacted*, That the United States mail shall be transported over said road under the direction of the Post Office Department at such prices as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same. Approved June 3d, 1856.

296 And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise and enjoy the same rights, privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

Sec. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

Sec. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La
297 Crosse and Milwaukee Railroad Company, in making any such contract as last afaresaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such

companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

Sec. 4. For the purpose of aiding in the construction of the railroads, which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to the two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said
298 company, and so, from time to time, until said roads are completed. And it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

Sec. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads which shall be constructed by the application of funds derived from the lands hereby granted shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

Sec. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company
299 to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage

1879

of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

Sec. 7. Within five years after the title of such lands shall become vested in the said railroad company the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

Sec. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges or other watercraft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and
300 collect reasonable compensation for the same, and for that purpose
may purchase or build and own such vessels, boats, barges and other watercraft as it may require.

Sec. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

Sec. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed whatever the same is reasonably worth; such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

Sec. 11. This act and all grants herein contained shall cease and be void,

unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such
301 acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

Sec. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

Sec. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be open in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

Sec. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

Sec. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

Sec. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution
302 adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of State;

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hun-

1881

dred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in Book of Railroad Mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of the said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singu-
303 lar the railroad of said company commencing in the city of Milwau-
kee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix River or Lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute, or be a part of or appertain to, said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises

appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-house, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made, or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the
304 second part all and singular the lands granted, or intended to be
granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal lines already existing upon the property and franchises above mentioned.

1883

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions
305 herein expressed and also expressed in the said indenture made and
executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof; and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, or interest, whether legal or equitable, of said trustees and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week *for three weeks* at the least, in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee, and should any further notice be *required by the laws of the State of Wisconsin, the same shall be given.* And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during
the continuance of the trust, make, execute, cause to be duly record-
306 ed, and deliver to said trustee all such further conveyances and as-
surances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provisions thereof had been inserted and incorporated in the said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed [SEAL.] its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

307 La Crosse and Milwaukee Railroad Company, by—

N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president—

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence as to Lockwood L. Doty secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence as to William Barnes, the said trustee—

JOHN G. WHITE.
ISAAC EDWARDS.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president, as aforesaid, freely for the purpose therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, [SEAL.] at my office, No. Third street, in the city of Milwaukee, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed
308 the above instrument in writing as secretary of and in behalf of the
La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the above corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, [SEAL.] at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William

Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, [SEAL.] at my office, No seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,

Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

309 EXHIBIT NO. 3.

The Palmer mortgages on eastern division.

This indenture, made the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, party of the first part, and Francis A. Palmer, of the city of New York, party of the second part, witnesseth: Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are now engaged in constructing a railroad from the city of Milwaukee, on Lake Michigan, to La Crosse, on the Mississippi River, in the State of Wisconsin, and for that purpose, in part, have resolved to raise a sum of money by loan for the purpose of purchasing iron, rails, and machinery therefor, and of aiding in the construction of said railroad and putting the same into operation, and for the objects and purposes aforesaid; and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed and intended, by the said parties of the first part, to execute, issue and deliver five hundred bonds or writings obligatory, each for the sum of one thousand dollars, to be numbered respectively from number one (1) to five hundred, (500,) inclusive, and nine hundred bonds, each for the sum of five hundred dollars, to be numbered respectively from number one (1) to nine hundred (900,) inclusive, which bonds are to be in the following form:

310 United States of America, State of Wisconsin.

No.—. *The La Crosse and Milwaukee Railroad Company.* $——

Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to Francis A. Palmer, or bearer, in the sum of dollars, which sum said company promise to pay the said Francis A. Palmer, or to the holder hereof, at the Broadway Bank, in the city of New York, on the first day of November, in the year one thousand eight hundred and seventy-four, and also interest thereon at the rate of eight per centum per annum, semi-annually, on the first day of each November and of each May ensuing the date hereof, until the said principal sum shall be paid on the presentation and delivery of the annexed warrants at said bank. This bond is one of a series of fourteen hundred bonds of the company aforesaid, of even date, to wit: 500 bonds for the sum of **$1,000** each, numbered respectively from number 1 to number 500, inclusive, and 200 bonds for the sum of **$500** each, numbered respectively from number 1 to number 900 inclusive, amounting in the aggregate to **$950,000**, secured by

188

a mortgage executed in trust to Francis A. Palmer, of the city of New York, upon that part of the road of said company extending from its eastern termination, in the city of Milwaukee, to Portage City, being 95 miles in distance, together with the property and effects of said company on that part of the road. And said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer.

The holder of this bond shall be entitled, at any time within ten years from the date hereof, to convert the principal sum into the stock of the said company, at par, on surrendering this bond, with the interest warrants not then due annexed.

In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, at Milwaukee, the first day of July, 1854.

—— ——, *President.*
—— ——, *Secretary.*

311 I hereby certify that the La Crosse and Milwaukee Railroad Company have executed to me in trust their mortgage referred to in the foregoing bond, and that I have caused the same to be recorded in the several counties wherein said mortgaged premises are situated, and that the foregoing is one of the several bonds described in and secured by said mortgage.

—— ——, *Trustee.*

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds, and interest thereon accruing, and in consideration of one dollar, paid to the said company by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey, to the said party of the second part, his successor or successors in the trust hereby created, all their said road from its eastern termination in the city of Milwaukee to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied so to be for right of way within the limits aforesaid, together with bridges, fences, privileges, rights, and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the same, and all lands used for and occupied within the limits aforesaid, by depots and stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shop tools and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed and to be constructed, within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining. But nothing herein contained shall be so construed as to prevent the said parties of the first part from selling, hypothecating, or otherwise disposing of any city or county bonds or other securities received in payment of stock or otherwise,
312 or of any lands or other property of said company necessary to be retained for the roadway, depots, and stations, now required for the construction or convenient use of that part of said road, nor from collecting moneys due said company on stock subscription or otherwise, nor shall any-

thing herein contained be so construed as to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repair of the remaining parts of said road westward towards the Mississippi River, all stock subscriptions, donations, or loans of money, lands, or other property which may have been, or may hereafter be, made for that purpose; but said parties of the first part shall have full right so to proceed, without let or hindrance from said party of the second part. And the remaining portion of the said railroad which, by the said parties of the first part, may be so constructed shall be held in use by the said parties of the first part to their own benefit and behoof forever, so far as the claims of the said party of the second part, or his successor, might otherwise be construed as in conflict therewith, it being distinctly understood that the conveyance made by this indenture is only for so much of the present or hereafter to be acquired rights, interest, and property of the said company, parties of the first part, as are or shall be vested or belong or appertain to that part of said railroad, extending from the city of Milwaukee to Portage City aforesaid, and being in distance ninety-five miles. To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal or any part thereof, or any of the interest of any of said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then after sixty days after such default, in case such principal or interest shall then remain unpaid, upon request of the holder of such bond, it shall and may be lawful for the said party of the second part, his successor in said trust, or assigns, at his or their discretion, to enter into and upon and take possession of all and singular the whole or any part of their property and effects, mortgaged as above expressed, or so intended to be, and as the attorney in fact, or agent of the said parties of the first part, by himself, or agents or substitutes, duly constituted, have and, in his or their discretion, use and employ the
313 same, making, from time to time, all such repairs, alterations, and additions thereto as he or they may deem necessary, and receiving the tolls, rents, issues, and profits of said part of said railroad and appurtenances, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the second part, his successor in said trust, and assigns, at his or their discretion, may, or on the written request of the holders of at least one half of the bonds then unpaid and unconverted into stock shall, cause the said premises, property, and effects hereby mortgaged or intended so to be, or so much thereof as shall be necessary to and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of Milwaukee, in the State of Wisconsin, aforesaid, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple of said premises, and such other instruments as may be necessary or proper for the property or effects so sold, which shall be a bar against the parties of the first part, their successors or assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, property, or effects, or any part thereof. And said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be

1889

necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry on sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, property, or effects hereby mortgaged, or intended so to be, or any part thereof, to the said party of the second part, his successors in said trust, and assigns, for more fully 314 carrying into effect the objects hereof, particularly for the conveyance of any property or effects subsequently to the date hereof acquired by said parties of the first part, and hereby intended to be affixed, and these presents to be subscribed by the president, and the said party of the second part has set his hand and seal the day and year first above written.

STODDARD JUDD, *President.* [SEAL.]

Signed, sealed, and delivered in presence of—
Robert E. Gillet.
L. H. Burnell.

FRANCIS A. PALMER. [SEAL.]

Signed, sealed, and delivered in presence of—
Geo C. Peters.
Lewis N. Glover

State of New York,
City and County of New York, ss:

I, Lewis N. Glover, residing in the said city of New York, duly appointed by the governor of the State of Wisconsin a commissioner for said State of Wisconsin, in and for the State of New York, duly sworn and qualified to take testimony, acknowledgments, &c., to be used or recorded in said State of Wisconsin, do, by this instrument, given under my hand and official seal, certify that on this thirteenth day of June, A. D. eighteen hundred and fifty-four, before me personally appeared Francis A. Palmer, known to me to be the same person who executed the foregoing instrument, and the said Francis A Palmer acknowledged the signing and sealing of the said instrument to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

LEWIS N. GLOVER, [SEAL.]
Commissioner for Wisconsin in New York.

State of Wisconsin,
City and County of Milwaukee, ss:

On this fifth day of July, A D. 1854, before me, Robert E. Gillet, a notary public in and for said county of Milwaukee, and State of Wisconsin, personally came Stoddard Judd, the president of the La Crosse and Milwaukee Railroad Company, to me known, being by me duly sworn, did depose 315 and say that he resides in the city of Fox Lake, county of Dodge, in the aforesaid State of Wisconsin, that he is the president of the La Crosse and Milwaukee Railroad Company, that he knows the corporate seal of the said railroad company, that the seal affixed to the above and foregoing instruments in writing is such corporate seal, that it was so fixed by order of the board of directors of said railroad company, and that he signed his name thereto by like order, as president of the said railroad company.

In witness whereof, I have hereto subscribed my name, and affixed my notarial seal this fifth day of July, A. D. 1854.

ROBERT E. GILLET, [SEAL.]
Notary Public, residing in the county of Milwaukee, State of Wisconsin.

Recorded July 5th, A. D. 1854, at 10 o'clock a. m.

316 EXHIBIT NO. 4.

Supplemental mortgage to Francis A. Palmer.

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county, and State of New York, party of the second part. Whereas the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage, covering all the real and personal property and estate appertaining to the eastern line or section of their road, extending from the city of Milwaukee to Portage City, and being about ninety-five miles in length, which mortgage bears date on the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the same counties through which said road runs, the same having been made to the party of the second part in trust, to secure the payment of the principal and interest of certain first mortgage eight per cent. coupon bonds of the said company of the denominations of one thousand dollars and five hundred dollars, bearing date the first day of November, A. D. one thousand eight hundred and seventy-four respectively, with the interest thereon from date, at the rate of eight per cent. per annum, payable half yearly thereafter, which bonds amount, in the aggregate, to nine hundred and fifty thousand dollars, and which the said company by virtue of the said mortgage contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their said eastern line or section of road from the city of Milwaukee to Portage City, as by reference to the said mortgage or the record thereof more fully and at large appear; and whereas the said company have heretofore issued
317 and sold a portion of the said bonds thus secured, amounting to four hundred and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from number one to number sixty-four, inclusive, number seventy to number ninety, inclusive, number ninety-six to number one hundred and one, inclusive, and number one hundred and fifty-one to number three hundred, inclusive, and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from number one to number four hundred and twenty, inclusive, and have built and equipped about sixty-one miles of the said eastern line or section of their road, leaving on hand and in their possession unsold, the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive, from number ninety-one to number ninety-five, inclusive, from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and which the company contemplate to sell and negotiate for the purpose of raising

means to aid in finishing the remainder of their said eastern section or line of road; and whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have, by a resolution by this board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net earnings of the road, and depositing with the United States Trust Company, of the city of New York, for the next nineteen years, the sum of twelve thousand dollars, which principal sum, together with all accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive, from number ninety-one to number ninety-five, inclusive, from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, as aforesaid, and four hundred and
318 eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, as aforesaid, on or before the maturity thereof:

Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions, and agreements contained in the aforesaid indenture of mortgage heretofore executed and delivered as aforesaid, and as supplementary thereto, for the considerations aforesaid, and for and in consideration of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have covenanted, promised, and agreed, and hereby do covenant, promise, and agree, to and with the said party of the second part, his successor and successors in the trust hereby created, and assigns, that for the further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive, from number ninety-one to number ninety-five, inclusive, from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and amounting in the aggregate to five hundred thousand dollars, they will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriate from the net earnings of the said road for the preceding twelve months, and deposit with the United States Trust Company, of New York, (an incorporated institution, located and doing business in the city of New York,) or its successor, which said United States Trust Company, or its successor, is hereby made, constituted, and appointed the trustee or receiver of the parties hereto, and of all the holders of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which, together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amounting to five hundred thousand
319 dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage, on or before the maturity of the said last-mentioned bonds; the first setting apart and appropriating of said sinking fund to be

made and deposited on the first day of November, A. D. one thousand eight hundred and fifty six, and the sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company, or its successor, in the purchase of the residue of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are of the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive, from number ninety-one to number ninety-five, inclusive, from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to nine hundred, inclusive, issued under the aforesaid mortgage, whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same at the date of the purchase. In case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then, and in that case, the United States Trust Company, or its successor, shall from time to time invest the said funds under the advice and direction of the board of directors of the party of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part, provided, however, that the obligations of the parties of the first part, to make such annual deposits to the said sinking fund as aforesaid, shall cease and determine so soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulations of interest thereon, form a capital sufficient to pay and discharge at the maturity thereof all the outstanding unconnected bonds, numbered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successors, shall at all times keep a proper and correct registry and account of the said several securities and sums to be held by them as aforesaid, and belonging to the said sinking fund, for the inspection and examination of the parties hereto, and of any of the stockholders or bondholders of the road, and shall annually hereafter,
320 during the continuance of the said trust, render to the parties hereto
a written statement, showing the true state and condition of the said sinking fund, and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall, as purchased, be cut, cancelled, and retained by the said United States Trust Company, or its successors, and be held and returned by them at the expiration of their trust.

The interest coupons on said purchased bonds are, however, to be regularly paid to the United States Trust Company, or its successor, by the parties of the first part, in the same manner as if held and owned by a third party for value, and in case of the resignation of the said United States Trust Company as such trustee or receiver, or of its successor, or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time appoint and substitute as a new trustee or receiver any other incorporated institution located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose; and said new trustee or receiver, or the successor thereof, shall be vested with all the right, estate, powers, and privileges hereby conveyed to or vested in the United States Trust Company. And the said United States Trust Company, or its successor, shall, upon request, forthwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property, and securities belonging to the said sinking fund so deposited with

1893

and held by them as aforesaid. The said United States Trust Company, or its successor, shall apply the funds and available securities in their hands to the payment and redemption of the said mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from No. 65 to No. 69, inclusive, from No. 91 to No. 95, inclusive, from No. 101 to No. 150, inclusive, and from No. 301 to No. 500, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900, inclusive, at their maturity rendering the overplus, if any, to the parties of the first part, or their assigns, and in case the parties of the first part shall fail, neglect, or refuse to set apart, appropriate, and deposit with the United States Trust Company, or its successor, the said several sums of money, or any or either of them, for the purposes of a sinking fund, at the times and in the manner hereinbefore particularly set forth and provided, then, at the expiration of sixty days
from and after such default, failure, neglect, or refusal, in case such
321 payment and appropriation to the said sinking fund shall not have
been made upon the request of the holder of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive, from No. 91 to No. 95, inclusive, from No. 101 to No. 150, inclusive, and from No. 301 to No. 500, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900, inclusive, or upon the request of the said United States Trust Company, or its successor, the said party of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon, and take possession of, all or any part of said premises, real and personal estate and property, and as the attorney in fact, or the agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid, and the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one half of the said residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid or unconverted into stock, and not purchased and deposited for the sinking fund as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days' previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights, and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim, of, in, or to said premises, real and personal estate, and property, right, and franchises, or any part thereof. The amount
of the bids or purchase-money on the said sale may be paid and satis-
322 fied in whole or in part by the residue of the said outstanding mort-
gage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and deter-

mined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund, as compared to the amount of outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds numbered as last aforesaid, issued under the said mortgage, and not converted nor purchased for the sinking fund, nor used in payment of such bid as aforesaid, and shall pay over and restore the remainder of said proceeds to parties of the first part, their successors, or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first hereby covenant for the considerations aforesaid to execute and deliver any further reasonable or necessary conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests, or property subsequently to the date hereof acquired by said parties of the first part, and comprehended or intended to be in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and transportation of iron rails and machinery, and for the construction and extension of said road, and the expenses attending such loan and purchase,
and that said rails and machinery so purchased shall be transported and
323 used with due diligence in the construction, finishing, and furnishing
said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors in the trust hereby created or assigned, shall be void, and when the principal and interest of all the residue of the said mortgage bonds issued under the said mortgage shall be fully paid, and the residue of said bonds numbered as last aforesaid duly cancelled, the said party of the second, his successor or successors, or the trust hereby created, or assigns, shall, upon the request of the parties of the first part, or their assigns, duly execute and acknowledge the payment and satisfaction of this agreement, and shall deliver up the same to the parties of the first part, or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, it shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control, and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, when such agent or attorney is selected with reasonable discretion, and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper

1895

compensation for any labor or service performed by him or them in the discharge of his trust, in case he or they shall be compelled to take possession of said premises and real and personal property and estate, or any part thereof, or to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and contract in the premises shall be divested, cease, and determine, and the said parties of the first part shall, or in their default to make proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage may apply to the supreme court of the State of Wisconsin to appoint in his place a new trustee, being resident of the city of New York, and thereupon, and upon his acceptance of the trust, such new
324 trustee shall become vested for the purposes aforesaid with all the
rights, estate, property, and interest hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements, or conveyances for that purpose, to the end that the true interest, object, and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereto caused to be affixed their corporate seal, and these presents to be signed by their president, and countersigned by their secretary, at Milwaukee, Wisconsin; and the said party of the second part has also hereunto set his hand and seal.

The foregoing, numbered 39, 40, 41, 42, 43, 44, 45, were adopted at a meeting of the board of directors, held February 6, 1856.

L. C. & M. R. R. Co. Sec'y's Office,
Milwaukee, May 3, 1858.

I have compared the foregoing with the directors' minutes as recorded in this office, and do certify that the same, being copies of resolutions, reports, and mortgage forms, numbered from number one to number forty-two, inclusive, are correct transcripts therefrom, and of the whole of the originals, and I so certify.

RICHARD DOTY, *Secretary.*

325 Exhibit No. 5.

Land grant mortgage.

Deed of trust, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as after mentioned, all of the city and State of New York, parties of the second part.

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows.

(Here follows said act)

And whereas the legislature of said State of Wisconsin subsequently passed an act, approved October 11th, 1858, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3, 1856.

(Here follows said act.)

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution
adopted by the directors of said company, a copy of which, certified
326 by the secretary of said company, under its corporate seal, was on
the same day deposited in the office of the secretary of state.

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix River or Lake, has determined to borrow a sum of money not exceeding ten million of dollars, and to issue its *bonds* for the repayment of the moneys which may be borrowed, with the interest thereon, nine thousand of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

"UNITED STATES OF AMERICA, *State of Wisconsin:*

"The La Crosse and Milwaukee Railroad Company. Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix River or Lake, which sum they agree to pay to the bearer hereof on the first day of February, in the year of our Lord 1877, at the Bank of the Republic in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York semi-annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9000, respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2000, respectively, make in the aggregate the sum of ten millions of dollars, to secure the payments of all which bonds a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired, or may hereafter acquire, in all the land granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute
the trust created by an act of Congress entitled "An act granting
327 certain lands to the State of Wisconsin to aid in the construction of
railroads in said State,'" approved June 3d, 1856, so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St Croix River or Lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired, or may hereafter acquire, in said road from Madison to St. Croix River or Lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed, bearing date the   day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property, and the interest thereby conveyed to said trustees.

[SEAL.] "In witness whereof, said railroad company has hereto affixed its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord 1857.

"——— ———, *President.*
"——— ———, *Secretary.*

"Registered and countersigned by the trustees, this day of , 185 .

"——— ———, *Trustees.*"

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the payments of such bonds as may be issued as aforesaid, in the manner herein provided:

Now, therefore, this deed witnesseth, that the said railroad company, in consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now
238 constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built or made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used in connection with said roads or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads.

And furthermore, and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of
329 Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said railroad company.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common. In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads from Madison to St. Croix River or Lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same, and take and receive the income and profits thereof in the same manner as though this deed had not been made

Second. When said road from Madison to St. Croix River or Lake shall be surveyed and located, and the particular lands granted as aforesaid to aid in the construction thereof shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten millions of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company, that, to the best of their knowledge, information, and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify in writing to said trustees that it has contracted for the sale of any section or parcel of said lands at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the
330 residue of the consideration money, with the interest thereon as hereinafter mentioned, shall be delivered to said trustees, the mortgage having been first duly acknowledged and recorded, the said trustees will thereupon make, execute, and acknowledge a deed, conveying to such purchaser, his heirs and assigns, all the right, title, interest, and estate of the said trustees of, in, and to the section or parcel of land so sold, with a covenant that they have not done any act, matter, or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage of the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money and the manner in which the same has been paid or secured.

Sales may be made in like manner of any section or parcel of said lands at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then and previously made, shall be equal to or above the aggregate for all the land sold as specified in said schedule.

Third. The consideration money on any such sale of land may be paid either in whole or in part, by delivering to said trustees to be cancelled one or more of the bonds which may have been issued by the railroad company as aforesaid at their par value; and payments upon any such mortgage as

1899

aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid at their par value ; and two or more purchasers may unite and pay a part or all of the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All money which may be received by said trustees under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and other expenses, shall constitute a sinking fund for the redemption 331 and payment of the bonds so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object ; and until the moneys shall be so applied the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same ; and whenever there shall be any money so on deposit, said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof ; and whenever the sum so on deposit shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees ; and in case a sufficient amount of bonds to absorb such surplus cannot be obtained at par in the city of New York, such trustees shall, on the written request of said railroad company, make purchase of bonds at a premium not exceeding ten per centum if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds, as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion, to sell, at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase-money ; and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of lands, or if default shall be made in the payment of the principal sum of said bonds at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon and take possession of all and 332 singular the said road from Madison to the St. Croix River or Lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and may operate said road and take and receive the income and profits thereof, and may sell all and singular the said roads and all the other property, real and personal, hereby conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company, of, in, or to said property and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid; but before any sale of the said roads or either of them, or the rights, liberties, privileges, or franchises aforesaid shall be made at auction, notice of such intended sale shall be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers at the least published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner hereinbefore provided.

Seventh Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed; and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as is herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, neither of the trustees
333 shall be answerable for the acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their rights, title, and interest, of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in and had executed the deed.

The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associates or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilities in relation to the same as fully as though he had been originally named as a trustee and had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain or be put to in the execution of the trust, and keep them fully indemnified in the premises.

334 Said trustees hereby accept and covenant, and agree to and with said railroad company, faithfully to execute said trust; and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will, from time to time, during the continuance of the trust make, execute, cause to be duly recorded, and deliver to said trustees or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estates, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed.

In witness whereof, said railroad company has hereto affixed its corporate seal and caused the same to be subscribed by its president and [L. S.] secretary, and the trustees have subscribed their names and affixed their seals, the day and year first above written

BYRON KILBOURN, *President,*
EDWIN H. GOODRICH, *Secretary,*
Of the railroad company.

GREENE C. BRONSON, [SEAL.]
JAMES T. SOUTTER, [SEAL.]
SHEPHERD KNAPP, [SEAL.]
Trustees.

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich, secretary—

E MARINER.
S. H. ALDEN.

Witnesses as to Messrs. Soutter and Knapp—

J. S. ATWOOD.
JOHN BISSELL.

Witnesses for Greene C. Bronson as to the execution of the foregoing instrument by him—

EDWARD WADE.
S. H. ALDEN.

335 EXHIBIT No. 6.

Mortgage to Bronson and Soutter, eastern division.

Deed of trust, made this seventeenth day of August, in the year of our Lord eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees as hereinafter mentioned, parties of the second part.

Whereas said railroad company, for the purpose of constructing its roads, has determined to borrow a sum of money not exceeding one million of dollars, and to issue not exceeding one thousand of its bonds for the repayment of the sums which may be borrowed, with interest thereon, which bonds will be numbered respectively from one to one thousand, both inclusive, and will be substantially in the following form, to wit:

United States of America, State of Wisconsin.

No. —. $1,000.

336 Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to the bearer hereof in the sum of one thousand dollars for money borrowed for the construction of their roads, which sum they agree to pay to the bearer hereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. The holder of this bond may, at any time within five years from the date hereof, convert the same into the capital stock of the company, estimating both the bond and the stock at par, on surrendering the bond with the unpaid coupons.

This is one of one thousand bonds, all of the same tenor, and numbered from 1 to 1000, respectively, making in all one million of dollars, for securing the payment of which a trust deed has been executed by said company to Greene C. Bronson and James T. Soutter, of the city and State of New York, conveying to them (subject to certain charges thereon) the railroad of said company commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also conveying to them the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation; together with the equipments and all other things pertaining or which may hereafter pertain to the roads so conveyed, or either of them, reference to which deed is hereby had and made for a more full description of its contents.

[SEAL.] In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be signed by its president and secretary, this first day of September, in the year of our Lord 1857.

—— ——, *President.*
—— ——, *Secretary.*

Resistered and countersigned this day of , 185 .

—— ——, *Trustees.*

337 And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this deed witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty

miles, one half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute, or be part of or appertain to, said railroads, or either of them; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, or either of them; and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland aforesaid. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all
the property, real and personal, of said railroad company to be ac-
338 quired hereafter, as well as that which has already been acquired,
together with all the rights, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped.

Said railroad from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the said parties of the second part, and the survivor and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common; in trust nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustees are hereby authorized, in their discretion, either in person or by their attorney or attorneys, agent or agents, to enter into and upon and take possession of

all and singular the railroads and all the other property, real and personal,
hereinbefore conveyed, or intended to be conveyed, and to take and
339 receive the income and profits thereof, and to sell all and singular said
railroads and other property, with all the rights, liberties, privileges,
and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof; but before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee: and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case the interest in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustees, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, shall proceed to make such sales and conveyances as are above mentioned.

Third. Said railroad company covenants and agrees to and with said trustees, and the survivor and successor of them, that said company will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this deed to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be con-
veyed; and the trustees assume no duty or responsibility on those
340 subjects, or any of them, nor in relation to any other matter or thing
except as is herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustees, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustees in, about, or for the execution of the trust, and will in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they may sustain or be put to in consequence of accepting the trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustees.

Seventh. The trustees are hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustees be responsible for anything short of gross negligence, or willful default, in the discharge of any of their duties; nor shall either of the trustees be answerable for the acts, omissions, or defaults of his associate.

Eighth. All moneys which may be received by the trustees under the trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustees, and their compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Ninth. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associate or of the railroad company, reasonable notice being first given to said trustee. Either of the trustees may resign his trust, and be thenceforward discharged from all further duty or obligation in relation to it, provided 341 such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustee, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court, on reasonable notice to the other trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had been the original trustee and had executed this deed.

Tenth. Said trustees hereby accept and covenant and agree to and with said railroad company, faithfully to execute said trust.

{ Seal stamped on the paper. } In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustees have subscribed their names and affixed their seals, the day and year first above written.

BYRON KILBOURN,
President of the Railroad Company.
JACKSON HADLEY,
Secretary of the Railroad Company.

GREENE C. BRONSON, [L. S.]
JAS. T. SOUTTER, [L. S.]
Trustees.

Witness to the execution by Byron Kilbourn and Jackson Hadley—
Wm. C. Ford.
H. L. Richards.

Witness to the execution by Greene C. Bronson and James T. Soutter—
R. H. Lowry.
H. W. Ford.

Copy of acknowledgment.

State of New York,
City and County of New York, ss:

Be it remembered, that on this seventeenth day of August, one thousand eight hundred and fifty-seven, before me, the undersigned, Wm. Cleveland Ford, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State

342 of Wisconsin to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Byron Kilbourn, Jackson Hadley, Greene C. Bronson, and James T. Soutter, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof, by them sealed and subscribed, to be their free act and deed for the uses and purposes therein mentioned. [SEAL.]

In witness whereof, I have set my hand and affixed my official seal the day and year aforesaid.

WM. CLEVELAND FORD,
Commissioner for Wisconsin in New York.

Copy of certificate of recording endorsed on the back of the deed.

SECRETARY'S OFFICE,
Madison, August 21st, 1857.

Received for record and recorded in Book of Railroad Mortgages on pages 234, 235, 236, 237, 238, 239; received at 5 o'clock p. m.

D. W. JONES, *Secretary of State.*

Certified copy of resolutions of the directors of the company authorizing the trust, &c.

Resolved, That the company, for the purpose of carrying forward its legitimate operations, will issue its bonds to the amount of one million of dollars, each for the sum of one thousand dollars, to be numbered from number one to number one thousand, all of said bonds shall be expressed to be for money borrowed for the construction of their roads, and shall be payable to the bearer thereof on the first day of September, in the year of our Lord, 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons 343 to be thereto annexed; said bonds shall be convertible into the capital stock of the company, estimating both the bonds and stocks at par, at any time within five years from the date thereof. All of said bonds shall bear date on the first day of September, 1857, and be signed by the president and secretary, and have affixed to them the corporate seal of the company; and the said president and secretary are hereby authorized and directed, for and in behalf of the company to sign the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

Resolved, That, for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed bearing date at such a time as the same can conveniently be executed by the respective parties thereto, between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees, parties of the second part, which deed of trust shall be in the form following, to wit:

[Here follows a copy of the deed, excepting the date, signatures, seal, acknowledgment, &c.]

Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereto affixed its corporate seal and by being subscribed by the president and secretary; and the said president and secretary are hereby authorized and directed for and in behalf of the company to subscribe the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

And when said deed of trust shall also be duly executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded without unnecessary delay in such places and manner as the laws of this State may require for the purpose of making the same a complete and perfect security in favor of the trustees and the persons who may become the holders of the bonds.

Resolved, That the president of this company be, and hereby is, authorized to sell and dispose of all or any portion of an issue of one thousand bonds of this company of one thousand dollars each, amounting to one million of dollars, to bear date September 1st, 1857, payable September 1st, 1870, at the Bank of the Republic, in the city of New York, bearing interest at the rate of eight per cent. per annum, payable on the first days of March and September in each year, which are issued under and secured by a
344 deed of trust of this company to Greene C. Bronson and James T. Soutter, the execution of which bonds and deed of trust is authorized by resolutions of the board of directors adopted this 8th day of August, 1857, and the said president is authorized to sell the said bonds or any of them at the rate of eighty per cent. of their amount, payable half in cash and half in the stock of the company at par, or upon such other terms as he may deem proper.

Resolved, That a copy of these resolutions, duly certified under the seal of this company, be delivered to the trustees in said deed of trust.

I hereby certify the foregoing to be a true copy of a series of resolutions adopted by the board of directors of the La Crosse and Milwaukee Railroad Company, in session this eighth day of August, A. D. 1857.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the corporate seal of the La Crosse and Milwaukee R. R. Co.

JACKSON HADLEY,
Secretary of the La Crosse and Milwaukee Railroad Company.

345 EXHIBIT NO. 7.

Western division foreclosure bill.

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPARD KNAPP, trustees, &c.,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis.

346 To the judges of the circuit court of the United States for the district of Wisconsin:

Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, as-hereinafter mentioned, all of whom are residents of the city of New York, and citizens of the State of New York, bring this their bill against La Crosse and Milwaukee Railroad Company, a corporation duly established under the laws of the State of Wisconsin, J. Albert Helfenstein, trustee, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turten, John Sercom, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, all whom are residents and citizens of said State of Wisconsin; and Selah Chamberlain, who is a citizen and resident of the State of Ohio; Newcomb Cleveland, who is a citizen and resident of the State of Illinois; Joshua Hathaway, who is a citizen and resident of the State of Georgia; and William Gemmell, who is an alien, and a resident of Scotland, in the kingdom of Great Britain, and a subject of the Queen of Great Britian. And thereupon your orators complain and say that the several actions and doings hereinafter stated and set forth, so far as they purport to be the acts or doings of your orators, are true of their own knowledge; and as to all the other matters and things hereinafter stated and set forth, your orators are informed and verily believe that the same are true.

347 Under and in pursuance of an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852, the La Crosse and Milwaukee Railroad Company became and was a body politic and corporate by that name and style, with all such powers, rights, privileges, franchises and immunities as are mentioned in said act, and particularly with the power, right, privilege, and franchise of constructing and using a railroad in said State of Wisconsin, from La Crosse, in the county of La Crosse, to some point in the city of Milwaukee, a distance of about two hundred miles; which said company has ever since had and still has its office and principal place of business in said city of Milwaukee, and, as your orators are advised and believe, said corporation is a citizen of the State of Wisconsin within the meaning of the constitution and laws of the United States relating to the jurisdiction of the federal courts.

By several other acts of said legislature relating to said company, and by acts concerning or relating to railroad companies in general, in said State of Wisconsin, all passed subsequently to said act of incorporation, and before the making of the trust deed hereinafter mentioned, said company became entitled to the additional powers, rights, privileges, franchises and immunities mentioned in said several acts. To all of which said acts or statutes, including the original act of incorporation, and also to an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, and being chapter 43 of the Laws of 1856, your orators hereby refer, and pray that the same may be taken and received as part of this bill of complaint as fully as if the same were herein recited and set forth at large.

Among the acts to which reference is above made, your orators particularly refer to said act of Congress, by which, among other things, certain lands were granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, and from thence to the west end of Lake Superior, and to Bayfield; and to the act of the legislature of Wisconsin, approved October 11, 1856, by which said company was authorized and empowered, among other things, to construct and operate a railroad

348 from Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, by the way of Portage City, to St. Croix River or Lake, and from thence to the west end of Lake Superior, and to Bayfield; and by which act all the lands which had been granted to said State of Wisconsin, by the government of the United States, to aid in the construction of the railroad in question, were, upon certain terms and conditions therein mentioned, granted to said La Crosse and Milwaukee Railroad Company, which said act was accepted and agreed to by said company within five days after the passing of the same, to wit, on the 11th day of October, 1856, by a resolution adopted by the directors of said company, and a copy of which resolution, duly certified by the secretary of said company, under its corporate or common seal, was within said five days, and on the day last mentioned, deposited in the office of the secretary of state of said State of Wisconsin.

Soon after the passing of the original act of incorporation, said company was organized, and commenced the construction of the railroad therein mentioned from La Crosse to Milwaukee, and continued said work until the making of the trust deed hereinafter mentioned, at which time said company had completed and put in operation a portion of the road, from a point in the city of Milwaukee to Portage City, or near that place, a distance of about ninety-five miles.

On or about the thirtieth day of December, in the year of our Lord, 1856, the board of directors of said company adopted resolutions to make the trust deed to your orators, and to issue bonds as hereinafter mentioned. A true copy of which said resolutions (with the exception of that part of the second resolution which follows the words "Now, therefore, this deed witnesseth," which part is in the same words with the corresponding part of said trust deed, and including all the remaining part of said deed down to the words "In witness whereof,") is hereunto annexed, and marked Schedule A, and which resolutions, your orators pray, may be taken and received as a part of this their bill of complaint.

Afterwards, and on or about the thirty-first day of December, in the year of our Lord 1856, said La Crosse and Milwaukee Railroad Company made its certain trust deed of that date, in the nature of a mortgage, between said company as party of the first part, and your orators as parties of 349 the second part, which deed was duly sealed with the corporate or common seal of said company, and subscribed by the president and secretary of said company, and was also subscribed by your orators, and delivered said deed to your orators, by which said deed, said company after reciting at large said act of Congress and said act of the legislature of Wisconsin of the 11th of October, 1856, and after also reciting the determination of the company to borrow a sum of money not exceeding ten million of dollars, and to issue the bonds of the company for the repayment of the said money, the form of which bonds was recited and set forth at large in said deed, and after also reciting the determination of the company to secure the payment of the bonds in the manner therein provided, did, for the purpose of securing the payment of said bonds, and the interest warrants or coupons thereto annexed, and upon the trusts in said deed mentioned and contained, grant, bargain, sell, convey, and confirm to your orators all and singular the several tracts, pieces, or parcels, of land which then were or might thereafter be or constitute the site of the railway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the lands and real estate which then constituted or might thereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix River or Lake, and from Portage City to La Crosse, and all the other property, real and personal, mentioned in said deed, and also all

the rights, liberties, privileges, and franchises of said company relating to said roads, and all the lands granted or intended to be granted to said company under or by virtue of said act of Congress and said act of the legislature, so far as said lands pertained or were applicable to the construction of said road from Madison, by way of Portage City, to St Croix River or Lake. To have and to hold the same to your orators, and the survivors and survivor, successors and successor, of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common; in trust, nevertheless, and upon the trusts, terms, and conditions in said deed expressed, as by said in part recited deed, now in possession of your orators, and ready to be produced as the court shall direct, will more fully and at large appear; a true copy of which said deed, with the exception of said act of Congress and said act of the legislature of the State of Wisconsin of the 11th of October, 1856, which are therein recited at large, is hereunto annexed, and marked Schedule B, and which copy your orators pray may be taken and received as a part of this their bill of complaint; which said trust deed,
350 after having been duly acknowledged by all the parties thereto, was
duly recorded in the office of the secretary of state of said State of Wisconsin, on the thirteenth day of January, in the year of our Lord 1857, in the Book of Railroad Mortgages, pages 92 to 108, inclusive, reference to which said record is also hereby had and made.

Afterwards, on or about the first day of February, in the year of our Lord 1857, said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in said trust deed, and sealed the same with the corporate or common seal of said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bond, on the first day of February, in the year of our Lord 1877, with interest at the rate of seven per centum per annum, payable in the city of New York on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons to said bonds annexed. Interest warrants or coupons for the payment of said interest at the time above mentioned were annexed to each of said bonds, and all of which bonds were severally for the payment of the principal sum of one thousand dollars, except one hundred bonds, which were severally for the payment of the principal sum of five hundred dollars. Parcels of said bonds were, from time to time, registered and countersigned by your orators; and the schedule hereunto annexed, and marked C, shows the several times when such registry and countersigning were made, with the numbers and denomination of the bonds so registered and countersigned on each occasion, which schedule your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and about the several times when said bonds were so registered and countersigned by your orators, said company sold, issued, and delivered said bonds to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the bearers and holders of said bonds, and entitled to the moneys therein mentioned and agreed to be paid. And the bonds so made, registered, and countersigned, and so sold, issued, and delivered, amounted in the aggregate to four millions of dollars of principal money, and no more; and have (or most of them)
351 come, by transfer, into the hands of a large number of persons, some
of whom are unknown to your orators, and are too numerous to be made parties to this action.

After two thousand five hundred of said bonds of one thousand dollars each, amounting to two and a half million of dollars, had been so sold, issued, and delivered, and on or about the twenty-eighth day of January, in the

1911

year of our Lord 1858, said La Crosse and Milwaukee Railroad Company, in pursuance of its covenant in said trust deed, for further assurance, and for the purpose of better and more effectually securing the payment of the bonds which had already been issued and such bonds as should thereafter be issued, to the amount in all of four millions of dollars, made its certain indenture or deed of that date, sealed with the corporate or common seal of said company and subscribed by its president and secretary, and delivered said indenture or deed to your orators; and thereby said company did grant, covenant, and agree to and with your orators as is stated and contained in said indenture or deed, a true copy of which said indenture or deed is hereunto annexed, and marked Schedule D, to which your orators refer, and pray that the same may be received and taken as a part of this their bill of complaint; which said indenture or deed, after having been duly acknowledged, was duly recorded in the office of the secretary of state of said State of Wisconsin, in the Book of Railroad Mortgages, on page 321 to 326, both inclusive, on the 11th day of February, 1858, to which record your orators also refer for the contents of said indenture.

Soon after the making of said trust deed, and in January, 1857, said company commenced the construction of that part of said road from La Crosse to Milwaukee which lies or is situate between La Crosse and Portage City, and completed the same from Portage City to La Crosse, a distance of about one hundred and four or five miles, in the month of October, 1858. A part of the road so constructed, to wit, that part which lies or is situate between Portage City and Tomah, otherwise called the Junction, a distance of about sixty-one miles, is also part and parcel of said road from Madison, by way of Portage City, to the St. Croix River or Lake, to aid in the construction of which lands were granted to the State of Wisconsin and to said company, as hereinbefore mentioned. But neither said company nor your orators has or have obtained any deed or other evidence of title to any portion of said lands, or anything further than may be found in the act
352 of Congress and the act of the legislature of Wisconsin of the 11th
of October, 1855, hereinbefore mentioned. The governor of said State of Wisconsin has refused, and still refuses, to give the certificate required by said act to the Secretary of the Interior, and wholly denies that either said railroad company or your orators are entitled to any lands by reason or on account of having constructed said road from Portage City to Tomah, as hereinbefore mentioned.

About the first of October, in the year 1857, one Selah Chamberlain, who for several years last past has resided most of the time in the State of Wisconsin, and who, if not a citizen of that State, is a citizen of the State of Ohio, under some agreement or arrangement between himself and said railroad company made subsequently to the right, title, and lien of your orators, and in terms subject and subordinate to the right, title, and lien of your orators, entered into the possession, use, and enjoyment of all that portion of the railroad of said company which had then been completed, which portion extended from the city of Milwaukee westward to and beyond Portage City, and from time to time, as sections of the road further west were completed, entered into the possession, use, and enjoyment of the same, and ever since said railroad was completed to La Crosse, as above mentioned, has been, and still is, in the exclusive possession, use, and enjoyment of the entire road from Milwaukee to La Crosse, with all things appertaining to the same; and said Chamberlain during all the time aforesaid has taken and received to his own private use and benefit, and still does take and receive to his own private use and benefit, all and singular the rents, issues, profits, and income of said railroad, with its equipments and appurtenances.

On the first day of August, in the year 1858, said railroad company ut-

terly failed, and made default in the payment of the half year's interest which then became due and payable on said bonds, and wholly neglected and refused to pay the interest warrants or coupons which became due and payable on that day, which said default in payment has ever since continued, and no part of the interest which should have been paid on said first day of August has ever been paid by said company. A small number, about forty or fifty, of the interest warrants or coupons which became due on said first day of August were, within a few months afterwards, surrendered or delivered by bondholders to some officer of the company, on some security or engagement by the company to pay the amount in future;
353 but such payment has not been made, nor have said interest warrants or coupons ever been cancelled or destroyed.

On the first day of February, in the year 1859, and again on the first day of August in that year, said company utterly failed, and made default in the payment of the interest, interest warrants, or coupons which became due and payable on those days, respectively, and said company never has paid the whole or any part of the moneys which, according to the tenor and effect of said bonds, should have been paid on those days; and ever since said first day of August, 1859, the amount of interest in arrear and unpaid on said bonds has exceeded the sum of four hundred thousand dollars.

Said company has not acquired title to all the lands which constitute the site of the road from Portage City to La Crosse, nor to all the lands used for depot, engine, station, and other buildings pertaining to said road; the road was not constructed in a substantial or enduring manner, and is continually suffering deterioration from time and use, and said road, with its appurtenances, is not, in the judgment of your orators, worth more than the sum of one million of dollars And should your orators obtain said lands granted by Congress and the legislature of Wisconsin, so far as the same are or may be applicable to said road between Portage City and Tomah, as above mentioned, it would not add more than half a million of dollars to the security of the bondholders, the lands in question being of poor soil and quality, and of little value as compared with other lands in the same State. Said railroad company now is, and for a long time past has been, utterly insolvent and wholly destitute of property; said Chamberlain is also in insolvent circumstances, and, in any event, the bondholders will lose more than half, and probably fully three fourths of the moneys due to them from said company as such bondholders; and the longer the bondholders are delayed in obtaining possession of said road from Portage City to La Crosse, and getting into the receipt of the income and profits of the same, the greater their loss will be.

On or about the twenty-third day of August, 1859, your orators, by their attorney and agent, demanded of said Selah Chamberlain the possession and enjoyment of said railroad from Portage City to La Crosse, with all things appertaining to the same; but said Chamberlain utterly re-
354 fused, and ever since has neglected and refused to surrender the possession of said road, or its equipment or appurtenances, to your orators, and still continues to use and enjoy said road, with its appurtenances, and to take and receive the income and profits of the same to his own private use and benefit.

J. Albert Helfenstein, trustee; Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, have, or claim to have, some interest in or lien upon the said mortgaged premises or some part thereof, which interest or lien, if any, has accrued subsequently to the lien of said mortgage to your orators.

No proceedings at law have been had nor any suit or action commenced by or on behalf of your orators, or any holder of any of the bonds of said company secured by the mortgage aforesaid, or any or either of them, or any interest unpaid or accrued thereon, except only this action.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable and relievable, your orators therefore pray the aid of this honorable court, and that the La Crosse and Milwaukee Railroad Company may be decreed to pay to your orators said principal sum of money above mentioned, with the arrears of interest now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended; and in default thereof that said defendants above named, and all persons claiming and to claim under them or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises and every part thereof,
and may deliver over unto your orators all deeds, demises, and writ-
355 ings relating to or concerning the same; and that all and singular
said mortgaged premises, with the appurtenances, property, and effects in said mortgage described may be sold under the decree of this court, and that out of the money arising from the sale thereof your orators may be paid the principal sum due on said bonds of the said the La Crosse and Milwaukee Railroad Company, and all interest money due and to become due thereon, together with their commissions or compensation, and all costs and charges by them in this behalf sustained, or that they may have such other or further relief in the premises as may seem proper and shall be agreeable to equity and good conscience; and that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on those bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained; that your orators, as trustees, as aforesaid, may be let into the possession of the said railroad from La Crosse to Portage City, and the incomes, tolls, and profits of the same; and also all the depots, machine-shops, station-houses, and other real estate, equipment, and appurtenances connected with that part of the railroad of said last-mentioned company which lies between Portage City and La Crosse at the date of said first-mentioned mortgage, or at any time since, and also all the other property included in and covered by said mortgage. And as to the several persons above named, who are properly parties to this bill of complaint, and not citizens of the State of Wisconsin, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties if they shall come within such jurisdiction, and that a receiver may be appointed according to the course of practice of this court, and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings of said defendants, the La Crosse and Milwaukee Railroad Company, or said Chamberlain, as far as relates to said railroad from La Crosse to Portage City.

May it please your honor to grant unto your orators the people's writ of
subpœna, to be issued under the seal of this court, directed to said
356 defendants, respectively, therein, and thereby commanding them, on a
certain day and under a certain penalty, to be and appear before the judge of this honorable court, then and there to answer this bill of com-

plaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

GREENE C. BRONSON,
JAS. T. SOUTTER,
SHEPERD KNAPP,
Trustees.

CARY & PRATT, *Complainants' Solicitors.*
CLARKSON N. POTTER, *of counsel.*

STATE OF NEW YORK,
City and County of New York, ss:

On this 30th day of November, 1859, personally appeared before me Greene C. Bronson, James T. Soutter, and Sheperd Knapp, known to me to be the plaintiffs in the above action, who, being by me severally sworn, did depose and say, the said Bronson, that he had read the foregoing bill of complaint, and the said Knapp and Soutter that they had heard the same read, respectively, and that they, respectively, knew the contents thereof, and that the said bill of complaint is true of their own knowledge, except as to the matters which are therein stated to be upon their information and belief, and as to those matters they severally believe it to be true.

[L. S.] ALEX. OSTRANDER,
Commissioner for Wisconsin in New York, as witness my hand and official seal the day and year aforesaid.

357 EXHIBIT No. 8.

Bill to foreclose the second mortgage, eastern division.

United States district court, district of Wisconsin.

JAMES T. SOUTTER AND GREENE C. BRONSON
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
et als.

Copy of bill.

To the judge of the district court of the United States for the district of Wisconsin:

Greene C. Bronson and James T. Soutter, of the city of New York, and citizens of the State of New York, and trustees, as hereinafter mentioned, bring this their bill against the La Crosse and Milwaukee Railroad Company, a corporation created by an act of the legislature of Wisconsin, Selah Chamberlain, a citizen of the State of Ohio, Edwin Townsend, Avery Hill, Aaron V. Rudd, John H. Tesch, Franklin J. Blair, Edmund R. Persons, Ephraim Mariner, Thomas Turton, John Sercomb, Cicero Comstock, 358 Lawrence G. Graham, Donald D. Scott, Edward H. Brodhead, Dewitt C. Freeman, Sebre Howard, Joshua Hathaway, Charles Quentin, Sebastian Knetzger, Frederick Lind, August Sauthof, Moses M. Davis, Byron Kilbourn, George W. Chapman, citizens of the State of Wisconsin, the Milwaukee and Minnesota Railroad Company, the Milwaukee and Watertown and Baraboo Valley Railroad Company, and the Juneau Bank, corporations doing business in the State of Wisconsin, and created by the laws of the said State of Wisconsin, Edwin C. Litchfield, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wil-

son, J. Howard Mitchell, citizens of the State of New York, the Mercantile Bank of Hartford, a corporation doing business in the State of Connecticut, and Charles Howard, a citizen of the State of Michigan, William Gemmell, a subject of Victoria, Queen of Great Britain, James Wolstenholme, a citizen of the State of Rhode Island, Newcomb Cleveland, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L Simons, Nathaniel S. Bouton, citizens of the State of Illinois, Joshua Hathaway, a citizen of the State of Georgia, and thereupon your orators complain and say that the said La Crosse and Milwaukee Railroad Company were created a body corporate by an act of the legislature of the State of Wisconsin approved April the 2d, in the year eighteen hundred and fifty-two, with all the privileges, franchises, and immunities incident to a corporation, and capable in law of purchasing, holding, selling, leasing, and conveying estates, either real, personal, or mixed, and were authorized generally to do and perform all and singular the acts and matters which to any corporation it should lawfully appertain to do and perform for the well-being of the said corporation, and with power to locate and construct a railroad, with one or more railways or tracks, from a point in the village of La Crosse, in the county of La Crosse, to a point in the city of Milwaukee, and with power to transport, take, and carry property and persons upon said road, by the power and force of steam, of animals, or of any mechanical or other power; to erect and construct all such depots, station-houses, warehouses, car-houses and shops, engine-houses and shops; to manufacture or purchase all necessary engines, tenders, cars, and other conveniences for running said road; with power to borrow any sums of money from any person or persons, corporation or body politic of any kind, and at any rate of interest which may be agreed upon by and between such company and any person or party of whom such money might be obtained, any law on the
359 subject of usury in the State of Wisconsin or any other State where such transactions might be made to the contrary notwithstanding.

And with power to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other papers and securities of such amount and kind as might be deemed expedient by said corporation in consideration of any such loan, or in discharge of any liabilities that it might incur in the construction, repair, equipment, or running of said road; (the powers of the said corporation for the said purposes and for all purposes necessary to the carrying out of the object of said company, namely: the construction of a railroad from and to all points aforesaid being thereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to said contract.) And with power, under and by virtue of the said act and acts amendatory or supplementary to said act, and in pursuance of any acts of the legislature of the State of Wisconsin, to make, execute, issue, and deliver its bonds or obligations, and to prescribe the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same should be payable, the person or persons, trustee or corporation to whom they should be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest which such bonds should bear, and the manner and form in which the interest coupons annexed to them should be executed; and to secure the payment of any or all of said bonds, and in its corporate capacity to make, execute and deliver mortgages or deeds of trust upon the whole or any part of its railroads constructed or authorized to be constructed, and any or all the estate, real, personal or mixed, in possession or in expectancy, and to confer upon the trustee or mortgagee, full and ample powers to enter into and upon, and to take possession of, have, use, and employ, to sell and dispose of the whole or any part of said railroad or estate, together with the franchises appertaing to said railroad, and all corporate franchises, rights, and privileges of the said La Crosse and Milwaukee Railroad Company; and by its agents or brokers or otherwise, either in or out of the State of Wisconsin, to sell, loan, pledge, hypothecate, or otherwise dispose of any or all of the aforesaid bonds at par, or at any price less than par, and for such sum or sums, and on such terms as to the said company, or its said agents or brokers, should appear most for the interest of the said company.

And the rolling stock of said railroad company used in connection 360 with its railroad was declared to be and is, by the statutes in such case made and provided, fixtures; and all such property and all additional right of way, depot grounds, and all other real property acquired subsequently to the execution of any such trust deed or mortgage which may be provided for therein, should be subject to the same lien as might be created by such trust deed or mortgage upon the property therein described, to which such company had title at the time of its execution.

And your orators further show that the legislature of the State of Wisconsin, on or about the eleventh day of March, 1851, passed an act to incorporate the Milwaukee and Watertown Railroad Company, whereby they were declared and created a body corporate and politic by the name and style of the Milwaukee and Watertown Railroad Company, with all the privileges, franchises, and immunites incident to a corporation.

And your orators further show that the legislature of the State of Wisconsin, on or about the 13th day of October, A. D. 1856, passed an act entitled "An act to amend an act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2d, 1852; by which said act the said La Crosse and Milwaukee Railroad Company was authorized to consolidate the capital stock with the Milwaukee and Watertown Railroad Company, and declaring that upon such consolidation all the rights and privileges, grants, franchises, and immunities conferred by the charter of said companies, respectively, and by the acts amendatory thereto should be merged in and conferred upon said consolidated company, and that all the property and estate, real and personal, should become and be the property of the said consolidated company to all intents and purposes, together with all the rights and powers of each company by virtue of said acts and the acts amendatory thereto.

And your orators further show that the said companies, by their acts, in pursuance of said statutes, consolidated and became one company, and were authorized to act as such, and to mortgage or convey, by trust deed or otherwise, all the property, effects, and franchises of each or both of said corporations.

And your orators further show that the said defendant, the La Crosse and Milwaukee Railroad Company, executed, under their corporate seal, and with the signatures of their president and secretary, one thousand bonds, in each of which the said La Crosse and Milwaukee Railroad Company acknowledged themselves indebted to the bearer thereof in the sum of 361 one thousand dollars, for money borrowed for the construction of their road, and which sum they agreed to pay to the bearer thereof, on the first day of September, 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per centum per annum, payable in the city of New York semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons thereto annexed, which said coupons were by their terms payable at said Bank of the Republic, and all of the said bonds were of the same tenor, and numbered from one to one thousand, respectively, making in all one million dollars, and the same were all dated September 1st, 1857.

And your orators further show that all of said bonds were duly registered and countersigned by your orators, as trustees, and delivered to said company, and the same have been sold, transferred, and delivered by said company to divers persons, and the same are now held and owned as existing claims; and, as collateral security for the payment of the said bonds, or the moneys therein mentioned, and the interest thereon to become due and payable, from time to time, the said defendant, the La Crosse and Milwaukee Railroad Company, in consideration of one dollar, executed a mortgage or deed of trust, dated the 17th day of August, 1857, to your orators, Greene C. Bronson and James T. Soutter, of the city and State of New York, and duly acknowledged and delivered the same to yoar orators, whereby they granted, bargained, sold, conveyed, and confirmed unto your orators all and singular the railroad of said company commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road had then been constructed, and was in full operation; and also the railroad of the said company (as well that part which had then been constructed as that part which remained to be constructed) from Watertown, by way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last-mentioned road, being the part between Watertown and Columbus, had been constructed and was then in full operation, including all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of or appertain to the said railroad, or either of them; and also all and
362 singular the superstructure of said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether then built or made or to be built and made thereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which had already been or might thereafter be procured for or used on said railroads, or either of them; and all the materials, tools, implements, and utensils, and other personal property which had been or might thereafter be procured for or used in connection with the said railroads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland aforesaid. And it was thereby declared to be the intention of the parties to the said trust deed or mortgage to convey to and vest in your orators all the property, real and personal, of the said railroad company, to be acquired thereafter as well as that which had already been acquired, together with all the rights, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland, as fully and as amply as the same might be conveyed if said railroads had then been fully constructed and equipped; but said railroad from Milwaukee to Portage City was by the said mortgage declared to be subject to a first mortgage on the same of ten thousand dollars a mile, amounting in the aggregate to nine hundred and fifty thousand dollars; and the first eighteen miles of said road from Milwaukee westward was declared to be subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road westward of the said eighteen miles was declared to be subject to a second mortgage of two hundred thousand dollars.

And your orators further show that the said conveyance to your orators in and by said trust deed or mortgage were declared to be upon the trusts, terms, and conditions therein expressed, as follows:

First. Until default should be made in the payment of the said bonds, or some of them, or the interest thereon, that the said railroad company should be suffered and permitted to hold and enjoy such railroads, with the equipments and all other things appertaing to the same, and to use the same, and to take and receive the income and profits thereof to its own use in
363 the same manner as though the said deed had not been made.

Second. In case default for the space of sixty days should be made in the payment of any of said interest warrants or coupons, as they should respectively fall due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of the said cases, it should be lawful, and your orators were thereby authorized, in their discretion, either in person or by their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real and personal, thereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland, either at private or public sale; and to execute and deliver to the purchaser or purchasers deeds and conveyances, which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of your orators and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale should be made at auction notice of such intended sale should be published once in each week, for twelve weeks at least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same should be given. And in case the interest in default should be at any time equal to the amount of the interest for one year, on all the bonds then outstanding, or in case default should be made in the payment of the principal sum of money mentioned in said bond, or any of them, at maturity, that then, and in either of said cases, your orator, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, should proceed to make such sales and conveyances as are above mentioned.

And your orators further show that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by said trust deed or mortgage covenanted and agreed to and with your orators, and the survivor and successor of them, that said company would, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and
364 deliver to your orators all such further conveyances and assurances, and would do all such further acts and things as might either be necessary or proper for more effectually vesting in your orators all such rights, title, interest, or estate, both legal and equitable, as said company then had or might thereafter acquire of, in, or to all and every part of the property thereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchise aforesaid. And that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by the said trust deed or mortgage, further covenanted and agreed with your orators that they would, from time to time, pay all costs, charges, expenses, and compensation of your orators in, about, or for the execution of the trust, and would in all things keep them fully indemnified and saved harm-

less of, from, and against all damages, costs, charges, and expenses against which they might sustain or be put to in consequence of accepting the trust, or of anything which might be done or omitted under it, saving only such damage as might arise from the culpable act or neglect of your orators. And the said company authorized your orators to appoint all such attorneys, counsellors, clerks, and other agents as they might deem proper in the execution of the trust, and agreed that they should not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor should your orators be responsible for anything short of gross negligence or willful default in the discharge of any of their duties, nor should either of your orators be answerable for the acts, omissions, or defaults of his associate. And the said railroad company, in and by the said trust deed or mortgage, covenanted and directed that all moneys which might be received by your orators under the said trust deed, after deducting therefrom all costs, counsel fees, charges, and other expenses of your orators, and their compensation for executing the trust, should be applied to the payment of the bond which might be issued under the trust, and the surplus, if any, should be paid to the said company. All of which, by reference to the said trust deed or mortgage now ready to be produced as this court shall direct, will more fully and at large appear.

And your orators further show that the said mortgage was duly witnessed and acknowledged, and was afterwards, and on the twenty-first day of August, 1857, duly recorded in the office of the secretary of the State of Wisconsin, in the Book of Railroad Mortgages, on pages 234, 235, 236,
365 237, 238, and 239, as by the certificates on said mortgage will more fully appear.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, has failed to comply with their covenants and agreements as contained in said several bonds, and in said trust deed or mortgage, in omitting to pay the interest on the said bonds, respectively, which fell due and payable on the first day of September, A. D. 1859, amounting upon each bond to the sum of forty dollars, and upon all the bonds in the aggregate to the sum of forty thousand dollars, and that there is now justly due upon the said bonds the sum of forty thousand dollars, and the interest thereon from September 1st, A. D. 1859.

And your orators further show that no proceedings have been had at law or otherwise, to their knowledge or belief, for the recovery of the said sum of forty thousand dollars, the said interest on said bonds still remains due and payable.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, did not deposit with, or leave with, or in any form provide at the Bank of the Republic, in the city of New York, at or about the first day of September, 1859, or on any day before the filing of this bill, any sum of money for the payment of the said interest due and payable on the said first day of September, according to the said trust deed, or mortgage, at the said Bank of the Republic, or at any other place, to the knowledge or belief of your orators.

And your orators further show that the payment of the said interest has been demanded of the said Bank of the Republic since the same became due and payable, and that payment thereof was refused.

And your orators further show that by and in pursuance of said mortgage or deed of trust, on such default, your orators were, as they have been advised and believe, entitled to take possession of the said railroads, and secure the income and profits thereof; and that in pursuance of such power, your orators have demanded the possession of said railroad from the city of

Milwaukee to Portage City, with the income and profits thereof, but that the same was refused and denied to your orators.

And your orators further show that, on or about the 26th day of September, 1857, the said defendant, the La Crosse and Milwaukee Railroad Company, executed and delivered to the defendant, Selah Chaimberlain, a
366 certain writing, under the corporate seal of the said railroad company,
termed a lease, a copy of which is hereto attached and made part of this your orators' bill; that the said writing or lease, by its terms, gave to the said Selah Chamberlain the exclusive possession and the entire control of the entire line of railroad of the said La Crosse and Milwaukee Railroad Company, being between the cities of Milwaukee and La Crosse, including the said portion between the city of Milwaukee and Portage City conveyed to your orators as aforesaid, upon the trust, however, that, after paying the necessary running expenses, &c., he should pay not only the interest secured by the said trust deed or mortgage to your orators, but also the interest and sinking funds mentioned and described in the said mortgage or trust deed of your orators as prior liens and incumbrances thereto.

And your orators further state that the said defendant, Selah Chamberlain, at or about the time of the execution of the said writing or lease, went into the actual possession of all the said railroad therein described, and has been ever since and is now in the actual possession thereof.

And your orators further state, on information and belief, and charge, that at the time of the execution of the said writing or lease from the said La Crosse and Milwaukee Railroad Company to the said Selah Chamberlain as aforesaid, the said company were entirely and hopelessly bankrupt, and that the said writing or lease was executed for the purpose of securing to the said Chamberlain the payment of the indebtedness specified in the said writing or lease, and your orators show that the same was subsequent to the said mortgage of your orators, and subject thereto.

And your orators further show that the said railroad from Watertown to Milwaukee, by way of Columbus, is only partially built; that without its connection with the railroad from Milwaukee to Watertown, it is only a short isolated piece of road, of little or no value, and that the same has been sold and conveyed by the said La Crosse and Milwaukee Railroad Company to the Milwaukee, Watertown and Baraboo Valley Railroad Company, and that from its entire inadequacy as security your orators are obliged to look to the said railroad from Milwaukee to Portage City, with its appurtenances and rolling stock, as their principal security.

And your orators further state, upon information and belief, that neither the said defendant, the La Crosse and Milwaukee Railroad Company, nor the defendant, Selah Chamberlain, nor any one for them, has paid the interest due and payable upon the indebtedness of the said La Crosse and
367 Milwaukee Railroad Company, which are and were leins upon the
said railroad from Milwaukee to Portage City, with its equipments, rolling stock, depot grounds, and appurtenances, prior to the lien created by the said trust deed or mortgage to your orators, that is to say, the interest due upon nine hundred and fifty thousand dollars on the first day of November, 1859; the interest due upon three hundred and fourteen thousand dollars on the first day of September, 1859, amounting in the aggregate to the sum of forty-eight thousand nine hundred and ninety dollars, according to the terms and conditions of bonds issued by the defendant, the La Crosse and Milwaukee Railroad Company, out of bonds, the payment of which has been assumed by them, and all of which are secured by mortgages or deeds of trust, or in some way which constitutes them prior incumbrances to the said trust deed or mortgage of your orators, whereby the security of your orators has become greatly jeoparded.

And your orators further state that on their information and belief that the said railroad, with their appurtenances, included in said mortgage or deed of trust to your orators is a slender and insufficient security for the payment of the sums of money and the interest thereon which are liens upon the said railroads and upon the property included and intended to be included in the said deeds of trust and prior to and including the liens created by the mortgage or deed of trust to your orators as before set forth, and that while the said railroad from Milwaukee to Portage City is in the possession of the said defendant, Selah Chamberlain, it will greatly deteriorate in value for the want of necessary repairs, while the indebtedness secured thereby is increasing by reason of the non-payment of interest.

And your orators further state, upon information and belief, that the said mortgage or trust deed to your orators as aforesaid conveyed a large number of locomotive engines and rolling stock of various descriptions and together of very great value, at least to the value of $300,000; that the same belonged to and were a part of the said railroad from Milwaukee to Portage City; and that the same have been and are used by the said Selah Chamberlain for other purposes than for the working of the said railroad embraced in the said mortgage or deed of trust to your orators, are daily deteriorating in value, and that the earnings therefrom are diverted to other purposes than the payment of the interest accruing on the said liens on the said railroad, whereby your orators charge that the security of the said trust deed or mortgage to your orators has become and is of much less value, 368 of at least fifty thousand dollars less value than it would have been if the use of the said engines and rolling stock had been confined to the said railroad, or if the earnings therefrom had been applied towards the payment of the said interest.

And your orators further state that default of more than sixty days has been made in the payment of the interest warrants and coupons attached to the said bonds due and payable on the first day of September, 1859, and that by the said deed of trust your orators, upon the happening of that event, were by said deed of trust authorized and empowered by themselves, their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the said railroads and all other property included, or intended to be included in the said deed of trust and to sell the same, either at public or private sale, and give a good conveyance of the same.

And your orators further state that they have applied for the possession of said road and its appurtenances, and for further conveyances, according to the covenants and agreements on the part of the defendants, the La Crosse and Milwaukee Railroad Company, but that the said defendant, the La Crosse and Milwaukee Railroad Company, have refused to give up to your orators, or their attorneys, or agents, said railroad with their appurtenances, or to give to your orators such further conveyances or assurances.

And your orators further state that all the said bonds are made payable to bearer, and are negotiable by delivery, and that, as your orators believe, many of them are now held by various parties unknown to your orators; and that many of said bondholders, holding in the aggregate six hundred bonds, have requested your orators to proceed to enforce the lien of the said trust deed or mortgage, and to take such proceedings at law or in equity, as to your orators might seem best to make their said security available; that the said bondholders are principally non-residents of this State, and that this bill is filed in the name of your orators, but for the benefit and security of all of said bondholders; that the number of said bondholders is o great that they cannot, without manifest inconvenience and oppressive elays in this suit, be all brought before the court, and that your orators ully represent in this suit the interests of all said bondholders.

And your orators further state that the said defendants, the Milwaukee and Minnesota Railroad Campany, Selah Chamberlain, Sebre Howard, 369 Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Connecticut, August Sauthof, Charles Quentin, John H Tesch, Byron Kilbourn, Nathaniel S. Bouten, the Juneau Bank, the Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, and George W. Chapman, Moses M. Davis, and Charles Howard, have or claim to have some interest in the mortgaged premises as subsequent purchasers, or incumbrances, or otherwise.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to this your orators' bill. And that the said defendants, the La Crosse and Milwaukee Railroad Company, may be adjudged to pay to your orators, as trustees for the benefit of the said bondholders, the arrears of interest before mentioned and now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended; and in default thereof that the said defendants and all persons claiming or to claim under them or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises and those included in the said trust deed and every part thereof, with all and every the appurtenances, and that they may be adjudged and decreed to deliver over to your orators, or their attorney or agent, the possession of the said railroad and all its appurtenances and all its books, title deeds, and writings in relation to the same, and that all the income of the said road may be applied to the payment of said moneys due and to become due, and that all and singular the said property mentioned or intended so to be in the said mortgage or trust deed may be sold under and according to the decree of this court; and that out of the money arising from the sale thereof your orators may be paid all the principal and interest due or to become 370 due upon the said bonds and all the interest which is now due and may become due thereon, together with all the costs and charges by them in this behalf sustained or entitled to, and that the said defendant, the La Crosse and Milwaukee Railroad Company, be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto, and that your orators may have such other or further relief, order or decree, or both, in the premises as shall be just and equitable. And that in the mean time your orators, their agents or attorneys, may have authority to take possession of the said railroad and its appurtenances and secure all the income thereof, or that a receiver may be appointed according to the course and practice of this court, and with the usual powers of receivers in like cases of said roads and all their appurtenances, receipts and earnings. And that until the final decree in this suit the said La Crosse and Milwaukee Railroad Company, their attorneys, counsellors, officers, agents, trustees, treasurers, and all persons acting under them or either of them, and the said Selah Chamberlain, his agents, servants and attorneys may be restrained by injunction issuing out of this court, from using any of the engines,

cars, or any of the property included in said mortgage or deed of trust for any purpose whatever. May it therefore please your honor to grant unto your orators a writ of injunction, issuing out of and under the seal of this court, directed to the defendants, directed to the said La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, and each of them their attorneys, solicitors, agents, and all other persons acting under them, commanding them and each of them absolutely to desist and refrain from using any of the engines, cars, or any of the property included in the said mortgage or deed of trust, for any purpose whatever. May it please your honor to grant to your orators a writ of subpœna commanding the said defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard
Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Ct.,
371 August Sauthof, Charles Quentin, John H. Tesch, Byron Kilbourn,
Nathaniel S. Bouten, the Juneau Bank, the Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, and George W. Chapman, Moses M Davis, and Charles Howard, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orators will ever pray, &c.

THOMAS L. OGDEN,
Solicitor for Complainant.
JAMES S. BROWN, *of counsel.*

District of Wisconsin, *ss:*

P. Dow, being duly sworn, saith that Greene C. Bronson and James T. Soutter, the complainants in the foregoing bill, are now in the city of New York, as deponent verily believes; that this deponent is the attorney in fact of the said Greene C. Bronson and James T. Soutter by virtue of a power of attorney under seal for the purpose of instituting this suit; that this deponent has read said bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters stated on information or belief, and as to those matters he believes it to be true.

P. DOW.

Subscribed and sworn to before me December 9th, A. D. 1859.

JNO. M. MILLER, *Clerk.*

372 Exhibit No. 9.

Order of reference in western division foreclosure cause.

NITED States of America,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for he district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the seventh day) of January, A. D. 1861.

Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-third day of the said term, to wit, on the eleventh day of March, A. D. 1861, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

This day came the parties, by their counsel, and on consideration of the pleadings, proofs, and the arguments of counsel, it is ordered by the court that the reference be, and hereby is, made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust, and the real amount of said bonds.

373 And the said masters shall ascertain and report the amount of the several judgments of Newcomb Cleveland, Sebre Howard, and of Graham & Scott.

And it is further ordered that the said master report the amount of the several specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and that they may examine the said Chamberlain under oath and require him to produce his books; and they may also take additional testimony to that on file.

And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage; and also in the first and second mortgages, respectively.

March 21, 1861.—Ordered by the judge that Increase A. Lapham be, and hereby is, appointed a special master in this case, in the place of Joshua Hathaway, who declined serving.

374 EXHIBIT NO. 10.

Masters' report in western division foreclosure cause.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

To the Hon. A. G. Miller, judge:

In pursuance and by virtue of an order of reference made in this cause on the eleventh day of March, A. D. 1861, and of an order supplementary thereto made on the 21st day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase I. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matter referred by the said order, in addition to that on file, which proofs are herewith returned, consisting of the copies of depo-

sitions and of exhibits, the originals whereof are returned by us and filed in this court in the other cause depending in said court, in which the
375 said depositions and exhibits have been taken, on an order of reference and order supplementary thereto, made of the same dates as above, in which cause Greene C. Bronson and James S. Soutter, trustees, are complainants, and the said La Crosse and Milwaukee Railroad Company and others are defendants.

We further report that we have passed over the line of the railroad of the said La Crosse and Milwaukee Railroad Company, and have examined those portions thereof where any of the work done by the defendant, Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed; previous to which, we gave notice of our intended examination to the counsel for the defendant Chamberlain, and to the counsel for the defendants Howard, Graham, and Scott, and the Milwaukee and Minnesota Railroad Company, informing them that they and engineers selected by them were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Mr. Benjamin H. Edgarton, a civil engineer, whose testimony is among the depositions taken by us as above stated.

We have ascertained and computed the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust to the complainants, set forth in the bill of complaint in this cause, and the real amount of the said bonds

The real amount of those of the said bonds, numbered from one to one thousand nine hundred and ninety-one, inclusive, being 1,991 bonds first issued, of one thousand dollars each, at one hundred cents on the dollar, is one million nine hundred and ninety-one thousand dollars, ($1,991,000.) The interest thereon from February 1, 1857, to the date hereof, at seven per cent, is $638,779 17, (six hundred and thirty-eight thousand seven hundred seventy-nine dollars and seventeen cents;) of which sum there is due upon the coupons attached to said bonds, and payable in February and August of each year, the sum of six hundred twenty-seven thousand one hundred sixty-five dollars, which sum has been due since the first day of August, A. D. 1861.

The real amount of those of the said bonds, numbered from one thousand nine hundred and ninety-two to two thousand five hundred, both inclusive, being 509 bonds of one thousand dollars each, allowed at forty cents on the dollar, is two hundred three thousand six hundred dollars, ($203,600.) The interest thereon from February 1st, 1857, to date hereof, at seven per
376 cent., is $65,321 67, (sixty-five thousand three hundred twenty-one dollars and sixty-seven cents.)

The real amount of the remainder of the said bonds, being 1,450 bonds of one thousand dollars each, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and one hundred bonds of five hundred dollars each, numbered from one to one hundred, both inclusive, allowed at forty cents on the dollar, is six hundred thousand dollars, ($600,000.) The interest thereon from February 1st, 1857, to the date hereof, at the rate of seven per cent., is $192,500, (one hundred ninety-two thousand five hundred dollars.)

Thus the real amount of all the said bonds is $2,794,000, on which the in-erest unpaid to the date hereof is $896,600 84.

We have also ascertained the amount of the judgment of Newcomb leveland, mentioned in the said order, which is now equitably owned by ie defendant, Selah Chamberlain. The same was rendered on the seventh ay of October, A. D. 1857, for damages, $111,727 71; costs, $544 15. And there was paid thereon under the order of this court, April 22d, 1861, in full of interest and costs to that date, the sum of $28, 801 92.

The interest on the amount then due, at seven per cent., from that date to June 29th, 1861, is	$1,455 56
Adding principal	111,727 71
The total due was	113,183 27
Upon which date was paid	10,000 00
Leaving due June 29th, 1861	103,183 27
Upon which the interest to July 18th, 1861, at seven per cent., is	381 20
The amount then due was	103,564 47
Upon which date was paid	20,000 00
Leaving due at that date	83,564 47
On which interest to the date hereof is	698 68
The amount due at this date is	84,263 15

(Eighty-four thousand two hundred sixty-three dollars and fifteen
377 cents.)

We have also ascertained the amount of a certain judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee County, on the twentieth day of April, A. D. 1859.

There is due thereon at the date hereof damages and costs	$3,718 60
Interest to the date hereof	614 60
The amount due at this date is	4,333 20

We have also ascertained the amount of a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee County, on the twentieth day of April, A. D. 1859

There is due thereon at the date hereof, damages and costs	$1,525 71
Interest to the date hereof	252 14
The amount due at this date is	1,777 85

We have also ascertained the amounts of the judgments of Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is included and embraced in the judgment rendered in his favor by this court (on the law side thereof) on the twenty-eighth day of November, A. D. 1859; on which last-named judgment there is due at the date hereof:

Damages and costs	$16,379 86
Interest to the date hereof	2,013 39
The amount due at this date is	18,393 25

We have ascertained the amounts of the judgments of the defendants, (Graham & Scott,) mentioned in their answer filed in this cause. The amounts of their judgments rendered in the said circuit court are included and embraced in the judgment rendered in their favor by this court (on the law side thereof) on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date hereof:

378	Damages and costs	$44,413 18
	Interest to the date hereof	5,092 78
	Amount due at this date	49,505 96

We have inquired into and ascertained the amount of the several specific claims of the defendant, Selah Chamberlain, and have taken and stated an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file. The account of the said Chamberlain, comprising the said claims, (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us on his behalf, is herewith returned, marked Schedule First. The paper marked Schedule Second, herewith returned, contains his account with the said La Crosse and Milwaukee Railroad Company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, and also the items and amounts disallowed by us, and also showing the amounts of his receipts, set-offs, and credits, and of such as should be made for his claims, including his receipts of revenues of the whole road; and showing also the balance due to him, including interest, at the date of this report, which balance we have ascertained to be four hundred eighteen thousand six hundred and sixteen dollars and seventy cents.

And we have made a separate statement as part of said Schedule Second, of the real and just amounts due on the second day of October, A. D. 1857, on account of the items of indebtedness included in the judgment of the said Selah Chamberlain, rendered on that date, and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was, at that date, five hundred sixty-eight thousand nine hundred seventy-five dollars and seventy-seven cents, ($568,975 77.)

Of the several specific claims so allowed and stated in the said account is one under date of October 1st, 1858, for moneys paid by the said Chamberlain, on and before that date, in the construction of the depot building

379	of the said company at La Crosse to the amount of	$12,190 95
	On which interest to this date is	2,489 00
	Making the amount at this date	14,679 95

Which sum is secured to the said Chamberlain, who holds the title to the said building and the land on which it stands.

And another of the claims so allowed, under date of March 1st, 1859, is for moneys paid by the said Chamberlain to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its

purposes, amounting to	$3, 236 52
On which interest to date is	566 38
Making the amount at this date	3, 802 90

Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623, 235 78.

And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased, and by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

380 In ascertaining the facts and amounts, and in making the computations herein above contained and referred to, we have been guided by the opinions and instruction of this court communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1st September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

Filed Oct. 7, 1861.

Exhibit No. 11.

381 *Complainants' exceptions to masters' report in western division foreclosure cause.*

District court of the United States for the district of Wisconsin.

Greene C. Bronson, James T. Soutter, and Sheperd Knapp,
against
La Crosse and Milwaukee Railroad Company and others.
} In equity.

Exceptions taken by the said complainants to the report of Winfield Smith, as master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, to whom it was referred to ascertain, compute and report, among other things, as to the amount of interest really due upon and principal secured by the bonds issued under the deed of trust or mortgage given to your orators, and described in the complainants' bill of complaint, and also to ascertain and report the whole amount of rolling stock on the whole road, and which of the mortgages on said road covered and included said rolling stock:

382 1st. For that the said master and special masters have in and by their said report certified that the real amount of the bonds secured by the mortgage given to said complainants, numbered from 1992 to 2500, both inclusive, being 509 bonds of one thousand dollars each, was two hundred and three thousand and six hundred dollars, and that the interest thereon from February 1st, 1857, to the date of said report, at 7 per cent., was sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents;

whereas the said master and special masters ought to have certified that the real amount of the principal of the said bonds was $509,000 00, and the interest thereon from February 1st, 1857, to date of said report, at seven per cent., was $163,304 22.

2d. For that the said master and special masters have in and by their said report certified that the real amount of said bonds, numbered from 2501 to 3950, both inclusive, being 1,450 bonds of $1,000 each, and one hundred of said bonds of $500 each, numbered from one to one hundred, both inclusive, as allowed by them, was six hundred thousand dollars, and the interest thereon from February 1st, 1857, to the date of said report, at seven per cent., was $192,500; whereas the said master and special masters ought to have certified that the real amount of principal of said bonds was $1,500,000, and the interest due thereon from February 1st, 1857, to the date of said report, at seven per cent., was $481,250 00.

3d. For that the said master and special masters have in and by their said report certified that the real amount of all the said bonds was $2,794,000 00, on which the interest unpaid to the date of said report is $896,600 84, making in all the amount of $3,690,600 84; whereas the said master and special masters ought to have certified that the real amount of principal unpaid of said bonds was $4,000,000 00, and the interest due and unpaid thereon $1,283,333 39, making in all the amount of $5,283,333 39.

4th. For that the said master and special masters have in and by their said report certified that all the rolling stock on said road (except 40 box cars, which are specially named in said report) was covered by and included in the first mortgage upon the said railroad and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857; whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement of this suit, amounting to the sum of $53,600) was covered by and included
383 in the mortgage given to the said complainants, and described in the
bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens; and that as to the rolling stock purchased by said receiver above mentioned, 105-200 thereof was covered by the mortgage described in the complaint, and that to that extent the complainants' said mortgage was a first lien thereon.

Whereof said complainants except to the said master and special masters' said report, and appeal therefrom to the judgment of this honorable court.

CARY & PRATT, *Solicitors for Complainants.*

Filed Nov. 2d, 1861.

384 EXHIBIT NO. 12.

Order of court on masters' report in western division foreclosure cause.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862.

Present: The Honorable Andrew G. Miller, judge of said court, presiding.

On the second day of the said term, to wit, on the seventh day of January, A. D. 1862, the following proceedings were had:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD Knapp, trustees,
vs. } In equity.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J Albert Helfenstein, trustee, *et als.*

This day came the parties by their counsel, and on consideration of the several exceptions to the report of the masters, and the arguments of counsel, it is ordered by the court that the first, second, and third exceptions of complainants to said report be, and hereby are, overruled.

385 And it is further ordered by the court that the fourth exception of complainants be, and is hereby, overruled as to the forty box-cars which are covered by this mortgage. And it is further ordered by the court that on said exception the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars, is covered by and included in the first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or produced since the court has held possession by its receiver, costing $147,942 63, be applied to the said first mortgage and the mortgage in this bill in proportion to the net revenues on such portions of the road said mortgages respectively covered since the appointment of the receiver.

And it is further ordered by the court that the sixth and seventh exception of Selah Chamberlain to said report be, and hereby are, allowed; and that the tenth exception of said Chamberlain to said report be, and hereby is, overruled. And it is further ordered that the remaining other exceptions of said Selah Chamberlain be held by the court for further consideration.

386

EXHIBIT NO 13.

Decree in western division foreclosure cause.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862.

Present: The Honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald D. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy,

387 Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. T. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vetchen, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, aud John Nicholson. } In equity.

This day this cause came on to be finally heard at this term, upon the bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendents, Selah Chamberlain, J. Albert Helfenstein, trustee in a mortgage or deed of trust of said company, defendants, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hooper, D. S. Kingore, Noah Sturdevant, William H Fessenden, John L. Southerland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbuilt, G. S. Boardman. and John Nicholdson, and the
388 replications thereto and proof, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report, for interest on the bonds in the mortgage mentioned in this bill, numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds; and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage, numbered from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand and six hundred dollars for principal of the sum; and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned

in said mortgage of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds; which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds is found to be two millions seven hundred and ninety-four thousand dollars, be, and hereby is, confirmed.

And it is further ordered, adjudged, and decreed by the court that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction, under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eighteen hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post
389 office in the city of Milwaukee, within this district, and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged, and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged, and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, is as follows, viz:

All and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute, the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute or be, a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made
390 hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been,

or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road. Also all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix River or Lake, had already been designated and conveyed to said railroad company; with forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion
or share of rolling stock purchased and procured by the receiver,
391 costing one hundred and forty-seven thousand nine hundred and
forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be then stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in said bonds and mortgages, the court may, upon petition of the complainants or the holders of the said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition and the subsequent proceedings thereon. And the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decree signed, recorded, and enrolled January 13, A. D. 1862.

J. M. MILLER, *Clerk.*

EXHIBIT NO. 14.

392 *Marshal's report of sale of the western division.*

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD KNAPP, trustees, complainants,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard,
393 C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson, defendants.

In chancery.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby report that, in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months, in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the 25th day of April, in the year 1863, at two o'clock p. m., at the post office in the city of Milwaukee, then and there first offer for sale, and sell at public auction, the premises described in said decree as follows, to wit:

"All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of an act of Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved Oct. 11, A D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,"' approved June 3, A. D. 1856, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix River or Lake, estimated to be about one million acres of lands, together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, situate, lying, and being in the State of Wisconsin," which were bid off by William Wallace Pratt and Willian H. White, for the sum of one hundred and twenty-five thousand dollars, ($125,000,) they being the highest and best bidder, and that being the highest and best bid made for the premises described.

394 And I there offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: "All and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connection with said roads, or either of them, and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, (of said rolling stock forty box cars numbered, respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien incumbrance; but the remainder of the above-mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tools, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, and privileges of the said company of, in, and to, or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin;) and all and singular the privileges, hereditaments, appurtenances to the same belonging or in anywise appertaining, situate, lying, and being in the State of Wisconsin," which was bid off by William Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bid-
395 ders, and that being the highest and best bid made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids, and have paid to me the sum of two million eight hundred thousand dollars, as follows:

Said sum is $1,001,932. On each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause, said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three 8-100 dollars ($2,708,623 08) in bonds secured by said mortgages, as follows: nineteen hundred and thirty-nine (1,939) of said bonds, numbered between 1 and 1991, inclusive, for one thousand dollars each, eighteen hundred and sixty-five (1,865) of said bonds for one thousand dollars each, numbered between 1992 and 3950, inclusive, and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive, and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents ($91,396 22) in cash, all of which amounts to $1,001,932 on the dollar of the principal of all the bonds outstanding and secured by said mortgage.

DARIUS C. JACKSON, *U. S. Marshal*,
By W. S. JACKSON, *Deputy*.

EXHIBIT NO. 15.

396 *Confirmation of marshal's report of sale of western division.*

And afterwards, to wit, at a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863. Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the twelfth day of said term, to wit, on the fifth day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

This day came the parties by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it is ordered by the court that said exceptions be, and hereby are, overruled.

And it is further ordered and decreed by the court, that the said sale, so as aforesaid made, be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

EXHIBIT NO. 16.

397 *Appointment of receiver in western division foreclosure cause.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of April, A. D. 1860. Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the eighteenth day of May, A. D. 1860, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND
SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

The rule and motion of the complainants for the appointment of a receiver in this cause having been argued by Mr. Potter for the complainants, and by Mr. Lynde and Mr. Emmons for the defendant, Chamberlain, and submitted. On consideration whereof, it was ordered and decreed that this court doth hereby order and adjudge that the said complainants, or such one of them as they may select, be, and he or they are hereby, appointed receiver, as here-
inafter mentioned, and be at once put into possession of the mort-
398 gaged property; but in case said complainants, or either of them,
decline to act as such receiver, then, on filing such refusal, signed by them or their counsel, it is hereby further ordered that Hans Crocker be, and he hereby is, appointed receiver (in their stead) of all and singular the railroad from Madison, by way of Portage City, to St. Croix River or Lake, and from Portage City to La Crosse, mentioned in the bill of complaint, with all and singular the furniture, fixtures and appurtenances, engine-houses, workshops, depots, and other buildings and improvements, engines, cars, rolling stock, materials, equipments, tools, implements, utensils, and all and singular the personal property, rights, liberties, privileges, and franchises of the said railroad company relating to said road, or which have been procured for or used in connection therewith, or either of them, and all other the property, rights, and effects, franchises, and interest mentioned in the said deed of trust to the complainants which this action is brought to enforce.

And it is further ordered that the said trustees, or such one of them as may accept, and if not, then that the said Hans Crocker, before entering on his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that they or he will duly manage and conduct said railroad and mortgaged property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements, in accordance with the rules and practice and direction of this court.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said trustees, or such of them as they shall elect to act as receiver; and in case they decline to so act, then to the said Hans Crocker, as such receiver, all and singular the said railroad from Madison to Portage City, and from Portage City to La Crosse, and all other the real estate and premises in said deed of trust to complainants mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belonged to the La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, or at any time thereafter, which may have been procured for or used in connection with said mortgaged premises, or any part thereof, which may have come to the hands of the said defendants, respectively, or over which they have control; and
that such receiver take possession thereof, and take directly, or by
399 such agent as may be for that purpose by such receiver duly appointed,
the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession and operation, and use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership, and this application, and the costs and expenses of operating and maintaining, or preserving and keeping, said railroad and other property and premises to be received

by him as aforesaid, and then hold the balance of such money and receipts subject to the further order and direction of this court.

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

June 7, 1860.—This day came the complainants by their counsel, Mr. Cary, and declined to act as receiver by virtue of the order of this court, made on the 18th day last, as by their declination in writing filed. And the official bond of Hans Crocker, as receiver, approved and filed.

400 EXHIBIT No. 17.

Appointment of receiver in the Howard case.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY
AND SELAH CHAMBERLAIN.

June 9, 1860.—This day came the parties by their counsel, and the rule of the complainant for an injunction and for the appointment of a receiver having been argued on the bill, records and affidavits submitted. On consideration whereof it is ordered by the court that an injunction be, and hereby is, allowed, according to the prayer of the bill, until the further order of this court. And this day the motion and rule of the complainant for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant, and by Mr. Emmons for the defendant, Selah Chamberlain. The defendant the La Crosse and Milwaukee Railroad Company not appearing; on consideration whereof it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to, or used or connected with, said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver for the west-
401 ern portion of said road from Portage City to La Crosse, and be at once put into possession of the same, and every part and parcel thereof. And it is further ordered that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that he will duly manage and conduct said railroad and property, and for what he shall receive shall duly file inventories, and also file, under oath, every month accounts of his receipts and disbursements, according to the rules and practice and directions of this court. And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker as such receiver all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belongs or has been procured for, or used in connection with, said railroad or any part thereof, which may have come to the hands of the said defendants or over which they have control, and that such receiver take possession thereof, and take directly, or by such agent

as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation, or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership and the costs and expenses of operating and maintaining, or preserving and keeping, said railroad and other property and premises, to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court. And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property and the management and proceeds thereof as may be just and may be required."

402

Exhibit No. 18.

Appointment of receiver in second mortgage case.

July 6, 1860.—This day came the complainants by their counsel, and on their motion it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said the La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to, or used or connected with, said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver of the western portion of said road from Portage City to La Crosse,) and be at once put into possession of the same, and every part and parcel thereof.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker as such receiver all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belongs or has been procured for or used in connection with said railroad, or any part thereof, which may have come to the hands of the said defendants, or over
which they have control ; and that such receiver take possession
403 thereof, *and take possession thereof*, and take directly, or by such agent
as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation, or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership and the costs and expenses of operating and maintaining, or preserving and keeping, said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court.

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property and the management and proceeds thereof as may be just and may be required.

And same day (July 6, 1860,) came the defendants, Sebre Howard and John S. Rockwell, by their counsel, Mr. Hubbell, and on their motion it is ordered by the court that the time for taking testimony on either side be, and hereby is, extended to the second Monday of August next, and that the testimony be taken by either side according to the rules of court.

Order appointing receiver modified.

July 7, 1860.—This day came the parties by their counsel, and also came Hans Crocker, the receiver, and made his report, from which it appears, among other things, that there are mechanics' liens and mortgages upon the depot buildings and depot grounds of said road; that thirty-five miles of right of way remain to be secured and paid for; that one hundred and forty miles of fencing remain to be completed; that there is due for rolling stock purchased by S. Chamberlain while in possession of the road, and mortgaged by him to the vendor, $9, 547 91; that the depot grounds are encumbered with taxes and tax deeds; and further, that there is an immediate necessity for the purchase of at least three locomotive engines and fifty freight box cars. Said report having been submitted by consent, and upon the consideration thereof it is ordered, adjudged, and decreed by the court that the order appointing said receiver be, and is hereby, modified, and the court doth now here order and decree in manner following:

That the said receiver shall have power to bring and maintain any action or actions necessary or proper in order to enable him to execute his 404 duties, which actions or suits may be brought in the name of the La Crosse and Milwaukee Railroad Company; and in like manner he may defend any action or suit affecting the interests of the said company so far as may be necessary to protect the property and interests confided to his care, or as may be necessary and proper to enable him to discharge his duties as such receiver.

He shall also have power to compromise and settle all suits or actions that have been or may be brought against said company, so far as may be necessary to protect the property committed to his care, upon such terms and conditions as to him shall seem most advantageous to said railroad or to said company or other parties interested therein. He shall also have power, and is hereby authorized, to compromise, settle and discharge all lawful claims against said company or said road for right of way, liens upon depot grounds or buildings, taxes upon depot grounds, and special liens upon the rolling stock in use upon said road, so far as may be necessary to protect the property of said company. He shall also have power to arbitrate or compromise, on such terms as he shall deem most advantageous to the interests of the road, all claims for damages for detentions or injury to persons or property arising from running or operating said road. The net earnings of the road shall be applied as follows, as far as may be deemed necessary:

To the payment of such sum as shall hereafter become due the State of Wisconsin for license to operate said road by virtue of any law of the State.

To the payment of all sums due operatives and employees of the road, and for materials or supplies furnished said road which have accrued since the first day of April last; but the receiver shall be authorized to pay any proper expenses incurred in the operating or managing said road previous to that date, provided the same shall not exceed the sum of one thousand dollars.

To the payment of such sums as may be necessary to acquire the title to the right of way and depot grounds now used and occupied by the road.

To the payment of all sums due, or that may become due, to connecting roads on freight or passengers account in the ordinary course of business.

To the payment of the amount due on three notes given by S. Chamberlain in the month of August, 1859, for part payment on the purchase of freight cars, and which are subject to a chattel mortgage to secure the payment of such notes.

405 To the payment of such expenses as may be incurred in fencing so much of the line of road as the receiver may deem necessary.

The said receiver shall have power and authority to purchase such locomotives and freight cars as may be necessary for the business of the road, but not to exceed three locomotives and fifty house freight cars, and at a cost not exceeding fifty-four thousand dollars; and for such portion of the purchase-money of such engines and cars as the receiver shall not be able to pay at the time of the purchase or delivery thereof, he may execute to the vendor a chattel mortgage thereon, to secure the payment of such purchase-money in arrear.

To the payment of the costs of this suit, including the fees and charges of the solicitors and counsel of the complainants, incurred in this foreclosure, or that may be incurred therein, and all necessary expenses that have been or may be incurred in respect thereto, subject to allowance by the court.

The receiver, acting in pursuance of this, or of any former or of any subsequent order or decree hereinafter to be made, in good faith and with ordinary care and prudence, shall not be individually liable for any breach of contract entered into by him as such receiver, or for any injury to person or property of the parties or of third persons, or for the faults or negligence of his subordinates, and for his indemnity against or exoneration from any and all such liabilities, should any such occur, the property, money, and effects that shall at any time be in his hands as such receiver shall be bound, and may, from time to time, as may be necessary, be applied in such manner as the court shall direct.

406 EXHIBIT No. 19.

Reference as to masters.

March 11, 1861.—This day came the complainants by their counsel, and the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, Ephraim Mariner, the Milwaukee and Minnesota Railroad Company, who answered by John S. Rockwell and A. Fleming by their several counsel, and the Milwaukee, Watertown, and Baraboo Valley Railroad Company by its counsel. And on due consideration of the bill taken as confessed as aforesaid, and the pleadings, proofs, and arguments of counsel of these parties, it is ordered by the court that reference be, and hereby is, made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds and mortgage described in this bill, and the real amount of said bonds; and in computing said interest they deduct therefrom the amount received by the complainants through Prentiss Dow, their agent, of net revenues of the road and property of the company covered by the mortgage; and for this purpose they shall state an account of receipts and disbursements, and require said Dow to produce his books and be examined under oath as to all things pertaining thereto, and they may take additional testimony to that on file.

And the said masters shall ascertain and report the amounts of the several judgments of Newcomb Cleveland, Sebre Howard, and of Graham & Scott, and whether lots sold under the execution issued on the judgment of Sebre Howard are or are not covered by this mortgage.

And it is further ordered that the said masters report the amount of the several specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits, and of such as should be made to his claims,
including his receipts of revenues of the whole road, without regard
407 to its divisions by the mortgages; and that they may examine the
said Chamberlain under oath, and require him to produce his books,
and they may also take additional testimony to that on file.

And be it further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole road, and that they specify the quantity thereof that is covered by and included in the first mortgage, and also in this mortgage, and in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp.

408

EXHIBIT No. 20.

Masters' report in eastern division foreclosure cause.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, *et als.*
} In equity.

To the Hon. A. G. Miller, judge:

In pursuance and by virtue of an order of reference made in this cause on the eleventh day of March, A. D. 1861, and on an order supplementary thereto, made on the 21st day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matters referred by the said orders, in addition to that on file, which proofs are herewith returned, consisting of depositions and exhibits, the latter numbered from one to thirty-nine, inclusive.

409 We further report that we have passed over the line of the railroad of the La Crosse and Milwaukee Railroad Company, and we have examined those portions thereof where any of the work done by the defendant Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed. Previous to which we gave notice of our intended examination to the counsel for the defendant Chamberlain, and to the counsel for the defendants Howard, Graham & Scott, and the Milwaukee and Minnesota Railroad Company, informing them that they and engineers selected by them, respectively, were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Benjamin H. Edgerton, an engineer, whose testimony is among the depositions herewith returned.

We have ascertained and computed the amount of interest due and unpaid on the bonds and mortgage described in the bill of complaint in this cause, and the real amount of said bonds.

The real amount of the principal payable upon the said bonds, being one thousand bonds of one thousand dollars each, allowed at fifty cents on a dollar, is five hundred thousand dollars	$500, 000 00
And the interest due and unpaid thereon is twenty-five thousand five hundred and ninety-four dollars and sixteen cents	25, 594 16
Which appears as follows: The entire amount of such interest which has fallen due since the the first day of March, A. D. 1859, when the last coupons were paid, is one hundred thousand dollars, being at the rate of eight per cent. per annum upon $500,000, the said principal sum, from that date to the date of that report	100, 000 00

From which sum we have deducted the amount received by the complainants through Prentis Dow, their agent, of net revenues of the road and property covered by the mortgage, (adding interest upon advances,)	74,405	84
Leaving due as stated Sept. 1st, 1861	25,594	16

For that purpose we have stated an account of the receipts and disbursements of the said Dow, and have required him to produce his books and be examined under oath as to all things pertaining thereto, which examination, with the exhibits therein referred to, numbered from twelve to
410 twenty-three, inclusive, and from twenty-five to twenty-seven, inclusive, are returned and filed herewith. The accounts of the complainants, so stated, embracing the real amount of the instalments of interest falling due to the date hereof, and the receipts and disbursements through the said Dow, omitting the items of disbursements charged by the said Dow in his accounts presented to us and returned among the said last-named exhibits, but not allowed by us, and also exhibiting the balance of interest due over such payments, as aforesaid, and the mode in which the said balance is obtained, is herewith returned and filed, marked Schedule First.

We have also ascertained the amount of the judgment of Newcomb Cleveland, mentioned in the said order, and now equitably owned by the defendant Selah Chamberlain. The same was rendered on the seventh day of October, 1857, for damages	$111,727	71
Costs	544	15
And there was paid thereon under the order of this court, April 22d, 1861, in full of interest and costs to that date, the sum of	28,801	92
The interest on the amount then due, at seven per cent., from that date to June 29th, 1861, is	1,455	56
Adding principal	111,727	71
The total due was	113,183	27
At which date was paid	10,000	00
Leaving due June 29th, 1861	103,183	27
Upon which the interest to July 18th, 1861, at seven per cent., is	381	20
Making the amount then due	103,564	47
There was paid at that date	20,000	00
Leaving then due	83,564	47
On which the interest to this date is	698	68
The amount due at the date hereof is	84,263	15

Eighty-four thousand two hundred sixty-three dollars and fifteen cents.

We have also ascertained the amount of a certain other judg-
411 ment, rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee County, on the twentieth day of April, A. D. 1859. There is due thereon at the date hereof—

Damages and costs	$1, 525 71
Interest to 1st Sept., 1861	252 14
The amount due at that date is	1, 777 85

We have also ascertained the amount of a certain other judgment, rendered in favor of Newcomb Cleveland against the said railroad company, in the said circuit court, on the twentieth day of April, A. D. 1859. There is due thereon at the date hereof—

Damages and costs	$3, 718 60
Interest to 1st Sept., 1861	614 60
The amount due at this date is	4, 333 20

We have also ascertained the amount of the judgments of the defendant Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is embraced in the judgment rendered in his favor in this court, on the 28th day of November, A. D. 1859, on which last-named judgment there is due at the date hereof—

Damages and costs	$16, 379 86
Interest to 1st Sept., 1861	2, 013 39
The amount due at this date is	18, 393 25

We have ascertained the amounts of the judgments of the defendants Graham & Scott, mentioned in their answer to this cause. The amounts of their judgments rendered in the said circuit court are embraced in the judgment rendered in their favor in this court, on the law side thereof, on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date hereof—

Damages and costs	$44, 413 18
Interest to 1st Sept., 1861	5, 092 78
The amount due at this date is	49, 505 96

412 We have ascertained and determined that the lot sold under the execution issued on the said judgment of Sebre Howard, rendered in the said circuit court, are covered by the mortgage of the complainants described in the bill of complaint in this cause. The papers herewith filed, marked Schedule Second, being certified copies of the sheriff's certificates of sale under the said execution, contain a list and description of the lots so sold.

We have enquired into and ascertained the amount of the several specific claims of the defendant Selah Chamberlain, and have taken and stated an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file. The account of the said Chamberlain, comprising the said claims, (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us, is herewith returned, marked Schedule Third. The papers marked Schedule Fourth, herewith returned, contain his account with the said railroad company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, and also the items disallowed by us, and showing also the amounts of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, and showing the balance due to him, including interest, at the date of this report; which balance we have ascertained to be four hundred eighteen thousand six hundred sixteen dollars and seventy cents.

And we have made a separate statement, as part of said Schedule Fourth, of the real and just amount due on the second day of October, A. D. 1857, on account of the items of indebtedness included in the judgment of Selah Chamberlain, rendered at that date and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was at that date $568,975 77.

Of the several specific claims so allowed and stated in the said account is one, under date of October 1st, 1858, for moneys paid by the said
413 Chamberlain on and before that date, in the construction of the depot building of the said company at La Crosse, to the amount of.. $12,190 95
On which interest to the date hereof, from that, at 7 per cent., is 2,489 00

The amount due at this date is........................ 14,679 95

Which sum is secured to the said Chamberlain, who holds the title to the said building and the ground on which it stands.

And another of the said claims so allowed under date of March 1st, 1859, is for moneys paid by the said Chamberlain to Jacob A. Hoover, for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its purposes, to the amount of.............................. .... $3,236 52
On which interest to the date hereof, at 7 per cent., is.......... 566 38

The amount due at this date is......................... 3,802 90

Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road six hundred twenty-three thousand two hundred thirty-five dollars and seventy-eight cents, ($623,235 78.)

And we have ascertained, and do further report, that of the said rolling stock, forty box-cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, (31,979 64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepard Knapp, and no other. And all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the complainant's mortgage specified in the bill of complaint.

414 In ascertaining the facts and amounts, and in making the computations hereinabove contained and referred to, we have been guided

by the opinions and instructions of the court communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1st September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

415 EXHIBIT No. 20½.

And afterwards, to wit, on the 2d day of November, A. D. 1861, came the complainants by their solicitor, and filed exceptions to the masters' report, as follows :

Exceptions of complainant to masters' report.

District court of the United States.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

Exceptions taken by the said complainants to the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, to whom this case was referred in pursuance of an order made on the 11th day of March, A. D. 1861, and a supplemental order made on the 21st day of March, 1861.

First exception. For that the said masters have, in and by their said report, for the purpose of computing interest due on the mortgage of the complainants, considered the principal sum secured by the mortgage of the complainants to be $500,000 ; whereas the said masters ought to have considered the said principal sum what the same actually is and as it is described in the said mortgage, to wit, the sum of $1,000,000.

Refer to page 3 of masters' report.

Second exception. For that the said masters' report the entire interest which has fallen due since the first day of March, A. D. 1859, to be the sum of $100,000; whereas the said masters should have reported the same to be the sum of $200,000.

Refer to pages 3 and 4 of masters' report.

Third exception. For that the said masters, in the schedule numbered one, attached to their report, neglect to credit the sum of $38,513 26 paid by the said trustees for interest on the first mortgage on the said road; whereas the said masters should have credited the same in the statement of accounts to the said trustees.

Fourth exception. For that the said masters, in the said schedule numbered 1, have neglected to credit to the said trustees the sum of $573 74 paid for the steamer Keokuk; whereas the said masters should have credited the same.

Refer to testimony of P. Dow, being on pages 25 and 36 of testimony as reported by masters.

416 Fifth exception. For that the said masters, in the said schedule, have neglected to credit to the said trustees the sum of $13,386 14 for expenses under the trust deed in this foreclosure suit; whereas the said masters should have credited the same.

Refer to Exhibit No. 22, and to pages 24 and 25 of testimony.

Sixth exception. For that the said masters, in the said schedule, have credited the said trustees on account of interest on the said mortgage set forth in the complaint from March 1, 1859, to March 1, 1860, with the sum of

$40,000; whereas the said masters should have credited for such interest the sum of $80,000 instead of the sum of $40,000.

Refer to Schedule 1, attached to masters' report.

Seventh exception. For that the said masters, in the said schedule, have charged the said trustees for a balance in their hands on the 9th June, 1860, of $33,253 21, and interest thereon, amounting to $598 56; whereas there was no balance in the hands of the trustees, and the said masters should have inserted no such item.

Refer to Schedule 1, attached to masters' report.

Eighth exception. For that the said masters, in the said schedule, have charged the complainants with interest on moneys in their hands, that is to say, under the date of September 1st, 1860, with the sum of $598 56, and under date of March, 1861, with the sum of $554 07; whereas the complainants are not chargeable with interest, and those items should have been omitted.

Refer to Schedule 1, attached to masters' report.

Ninth exception. For that the said masters, in the said schedule, have credited the said trustees on account of interest on the said mortgage from March 1, 1860, to September 1, 1860, only $20,000, and from September 1, 1860, to March 1, 1861, only $20,000, and March 1, 1861, to September 1, 1861, only $20,000; whereas the said masters should have credited $40,000 to Sept. 1, 1860, $40,000 to March 1, 1861, and $40,000 to September 1st, 1861.

Refer to Schedule 1, attached to masters' report.

Tenth exception. For that the said masters, in and by said schedule and by their said report, certify that the interest due to the complainants
417 on the first day of September, 1861, was $25,594 16; whereas the said masters should have certified that the interest due at that date was $200,000.

Refer to Schedule 1, attached to masters' report.

Eleventh exception. For that the said masters, in their said report, certify that the amount received by the complainants through Prentiss Dow, their agent, of net revenues of the road and property covered by the mortgage, is the sum of $74,405 84; whereas they should have certified that the net amount was $21,052 87.

Refer to Schedule 1, attached to masters' report, and to Exhibit 27.

Twelfth exception. For that the said masters, in their said report, have mingled the accounts of the trustees with Selah Chamberlain, and their accounts with the La Crosse and Milwaukee Railroad Company; whereas they should have only ascertained and reported the accounts of the trustees while they, the trustees, were in possession of the mortgaged property.

Refer to masters' report and Schedule 1.

Thirteenth exception. For that the said masters, in their said report, have reported the amount due upon a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company on the 7th day of October, 1857, for $111,727 71; whereas the said masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due upon the mortgage set forth in the complaint.

Refer to report, page 4.

Fourteenth exception. For that the said masters, in their said report, have reported the amount due upon a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee county, on the 20th April, 1859; whereas the said masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts, except so far as necessary to ascertain the amount due upon the mortgage set forth in the complaint.

Refer to report, page 5.

Fifteenth exception. For that the said masters, in their said report, have reported the amount due upon a certain other judgment in favor of 418 Newcomb Cleveland against the said railroad company, in the said circuit court of Milwaukee county, on the 20th day of April, 1859; whereas the said masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

Sixteenth exception. For that the said masters, in their said report, have reported the amount due on certain judgments in favor of the defendant Sebre Howard; whereas the said masters should have confined their inquiries to the issue raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

Seventeenth exception. For that the said masters, in their said report, have reported the amount due on certain judgments of the defendants Graham & Scott; whereas the said masters should have confined their inquiries to the issue raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

Eighteenth exception. For that the said masters, in the said report, have ascertained the amount of the several specific claims of the defendant Selah Chamberlain, to all of which the complainants except, for that the masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 8.

Nineteenth exception. For that the said masters, in their said report, have certified that of the rolling stock forty box cars, amounting at the cost price thereof to thirty-one thousand dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, are covered and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepard Knapp, and no other; whereas the said masters should have certified that the said rolling stock was covered by and included in the mortgage of the complainants in this action.

Refer to pages 12 and 13 of report.

THOMAS L. OGDEN, *Sol. for Compl't.*

419

EXHIBIT No. 21.

Order on report of masters.

January 7, 1862.—This day came the parties by their counsel, and on consideration of the exceptions of the parties to the report of the masters and of the arguments of counsel, it is thereupon ordered by the court that all the several exceptions of complainants to said report be, and hereby are, overruled. And it is further ordered by the court that the exceptions filed by Henry Valette to said report be, and hereby are, overruled.

And it is further ordered that the sixth and seventh exceptions of Selah Chamberlain to said report be, and hereby are, allowed, and that his tenth exception to said report be, and hereby is, overruled.

And it is further ordered by the court that the several remaining exceptions of the defendant Selah Chamberlain, and the several exceptions of the defendants Sebre Howard, Graham & Scott, and the Milwaukee and Minnesota Railroad Company to said report be held by the court for further consideration.

And it is ordered by the court that the said defendants Sebre Howard, Graham & Scott, the Milwaukee and Minnesota Railroad Company, and any other defendants who have liens subsequent to those claimed by Selah Chamberlain, may file a cross-bill against said Chamberlain, contesting the liens under the lease or assignment and judgment claimed by him in his answer. And if the said cross-bill is not filed by the first Monday of February next it will be considered by the court as waived.

And the answer of Henry Valette having been argued and submitted by his counsel, Mr. Palmer, it is ordered by the court that the said answer be, and hereby is, overruled.

And it is further ordered by the court that the report of the masters, allowing forty box cars to be covered by the land grant mortgage of said
420 company to Bronson, Soutter, and Knapp, be, and hereby is, confirmed.

And that the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars, is covered by and included in the first mortgage of the said company from Milwaukee to Portage City. And that all the rolling stock on said road that has been purchased or procured since the court has had possession by its receiver be applied *pro rata*, in proportion to the revenues of the road to the first said mortgage and the said land grant mortgage.

421

Exhibit No. 22.

Decree in eastern division foreclosure cause.

United States of America,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

Greene C. Bronson and James T. Soutter, trustees,
vs.
The La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner,
422 Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Conn., August Lauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouten, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Valette.
} In equity.

This day this cause came on to be finally heard upon the bill taken as confessed against the defendants the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Brodhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, F. J. Blair, E. R. Persons, E. Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur thereto, and upon the bill and the answers of the defendants Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Edward C. Litchfield, and Ephraim Mariner, and the replication thereto, and the pleadings and proofs, and upon the report of the masters herein filed, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, masters appointed by this court, wherein the sum of sixty-five thousand two hundred and sixty dollars and five cents appears to be due to the said complainants at the date of said report, upon the bonds and mortgage in said bill mentioned, for interest, and five hundred thousand dollars for the principal of said bonds, be, and is hereby, confirmed.

It is therefore further ordered, adjudged, and decreed, and this court doth hereby order, adjudge, and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount
423 owing to the complainants for the several bondholders for principal, interest, and costs in this cause, be sold at public auction under the direction of the marshal for this district, unless said mortgagor, the La Crosse and Milwaukee Railroad Company, or some one on its behalf, previous to such sale, shall pay the said sum of sixty-five thousand two hundred and sixty dollars and five cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, where said premises are situated; and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in said city and in the city of New York, at least once in each week for three months previous to the day of sale; and that said complainants, or any of the parties to this cause, may become the purchaser thereof; and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises; and that said marshal pay to said complainants or their solicitors, out of the proceeds of such sale, their costs in this cause to be taxed, and that he bring the moneys arising from such sale into court, for the several bondholders without delay, to abide the further order of the court.

And it is further ordered by the court that the bonds included in the mortgage may be received in payment of said purchase, at the rate of fifty cents on the dollar, in proportion that each bears to the amount of the sale.

And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises and every part and parcel thereof.

And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into such possession thereof as the said mortgage entitles them to, and that any of the parties to this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this cause, has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises and a certified copy of the order confirming the report of sale in this cause.

424 And it is further ordered and decreed by the court that upon the payment into court of the said sum of sixty-five thousand two hundred and sixty dollars and five cents, with interest from this date, and the costs taxed, and such interest as may become payable on the bonds in the mean time, further proceedings under this decree shall then be stayed. And if at any time hereafter there should be any default in the payment of any interest due on said mortgage, or of the sum of five hundred thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in the said bonds and mortgage, the court may, upon petition of the complainants or the holders of said bonds, by a further order, founded upon this decree, direct a sale of said mortgaged premises to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition and the subsequent proceeding thereon, and the same proceedings shall be had as often as a default shall be made.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz:

All and singular the railroad of said company commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other land and real estate which now constitute or may hereafter constitute, or be a part of or appertain to, said railroads or either of them. And also all and singular the superstructure of said railroads whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made or to be built and made hereafter.

425 And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads or either of them, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads or either of them.

And also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland aforesaid.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped.

Said railroads from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars.

But it is further ordered that the marshal do not sell all that part of said mortgaged premises as are embraced in the description, and relating to the railroad from Watertown, by way of Columbus, to Midland aforesaid, unless the sale thereof should, in the opinion of the court, be necessary and be required for the payment of the amount of the bonds and mortgage mentioned in this bill as settled by this decree, together with the previous liens on the premises described in said mortgage.

And it is further ordered by the court that the sale of the premises described in the said mortgage and in this bill as the railroad and appurtenances from the city of Milwaukee to Portage City be made subject to the mortgages and liens mentioned therein.

426 And it is further ordered by the court that the sale of said mortgaged premises be made irrespective of, and without regard to, any claim or interest of the defendant Ephraim Mariner to the same or any part thereof.

A. G. MILLER.

427 EXHIBIT No. 23.

Petition of Mil. and St. Paul Railway Co. for possession of whole road, and order of court May 7, 1863, for joint occupancy.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863: Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the seventh day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*
} In equity.

This day came Mr. Cary, on behalf of the Milwaukee and St. Paul Railway Company, and presented to the court its petition in writing, as 428 herein filed, "that it is a corporation duly organized by William Wallace Pratt and William H. White, the purchasers of the La Crosse and Milwaukee railroad and its appurtenances, at the marshal's sale under the decree of this court in this cause, by virtue and in pursuance of chapter seventy-nine of the Revised Statutes of the State of Wisconsin concerning railroads.

That in pursuance of said sale and the confirmation thereof by this honorable court, Darius C. Jackson, the said marshal of the United States for the district of Wisconsin, on the fifth day of May instant, executed and delivered to said William Wallace Pratt and said William H. White a deed of said mortgaged premises.

That immediately thereafter said purchasers, William Wallace Pratt and William H. White, organized your petitioner as a corporation under and by virtue of the provisions of said chapter seventy-nine of the Revised Statutes of Wisconsin, concerning railroads, and on the said fifth day of May instant filed their articles of association in the office of the secretary of state of the State of Wisconsin, a certified copy of which said articles of association are herewith shown to this court, and to which your petitioner prays leave to refer.

That afterwards, and on the 6th day of May instant, the said William Wallace Pratt and William H. White, under their hands and seals, executed and delivered to your petitioner, in due form of law, a deed of all and singular the said mortgaged premises aforesaid conveyed to them by the said Darius C. Jackson, marshal as aforesaid, which said deed is herewith shown to this honorable court, and to which, for greater certainty, your petitioner prays leave to refer.

And your petitioner further shows that Hans Crocker was appointed the receiver in this suit of said mortgaged property, and took possession thereof on the 11th day of June, in the year 1860; and your petitioner shows that the purposes for which he was appointed have been answered, and the duties of his office, (save accounting and being discharged,) are at an end, in consequence of a sale of the said mortgaged premises under the decree in this suit.

Your petitioner further shows that said Hans Crocker, receiver of said mortgaged premises, is also the receiver of the eastern division of said La Crosse and Milwaukee railroad, to wit, from the city of Milwaukee to Portage City, appointed under certain judgment creditors' bills, filed against said
429 La Crosse and Milwaukee Railroad Company, and also against the Milwaukee and Minnesota Railroad Company, and also in the foreclosure suit of Bronson and Soutter against said La Crosse and Milwaukee Railroad Company and others; that, as your petitioner is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said complainants, described in the bill of complaint in this cause, is a mortgage of the entire franchise, to use, operate, manage, and control said La Crosse and Milwaukee railroad, for its entire length, from the city of Milwaukee to the city of La Crosse, and that the said mortgage is prior and superior to all the liens, claims, and incumbrances on said eastern division, by virtue of which said Hans Crocker, as such receiver, now holds and operates such eastern division of said road; that, by the foreclosure of the complainants' said mortgage in this case, the sale and confirmation under said decree, the conveyance of the marshal to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization of your petitioner by said purchasers under and by virtue of the provisions of chapter seventy-nine of the Revised Statutes of Wisconsin, concerning railroads, and the conveyances by said purchasers to your petitioner of all and singular the said mortgaged premises, your petitioner has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railroad Company, in running, operating, and controlling said railroad in its entire length from the city of Milwaukee to the city of La Crosse, and that such rights so to run, operate, manage, and control the same is prior and superior to the rights of any of the defendants in this cause, and prior and superior to the rights of the mortgagees in the mortgage to said Greene C. Bronson and James T. Soutter on the eastern division, under which said Hans Crocker is acting as receiver, inasmuch as the said mortgage to the said complainants is prior in date and lien to the mortgage said to Greene C. Bronson and James T. Soutter.

And your petitioner is informed and believes that it is entitled, in virtue of the premises, to the possession, control, and management of the entire line of said railroad from the city of Milwaukee to the city of La Crosse, and to run, operate, manage, and control as a railroad the whole line of said road, subject to the obligation to account and pay over to said receiver the net earnings and income of said eastern division under the order and directions of this honorable court.

Your petitioner therefore prays that your honor will grant an order
430 directing the said Hans Crocker, receiver as aforesaid, to deliver to
your petitioner all and singular the said railroad from the city of Milwaukee to the city of La Crosse, its road-bed, track, and locomotives, engines, rolling stock, tools, implements, supplies, together with its depots, station-houses, engine-houses, and all other property belonging to said railroad, or used in operating the same, now in the possession of, or subject to the control of, said receiver, together with its appurtenances, rights, and franchises thereto appertaining, and that your petitioner be let into the possession and enjoyment thereof, your petitioner hereby offering to account to said receiver for the net tolls and income of said eastern division, under the direction and supervision of this honorable court, and to submit to such rules and regulations in respect thereto as this honorable court shall make and establish, and for such further and such other order as the court may see fit to grant.

And your petitioners will ever pray, &c.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

Whereupon it is ordered by the court (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie, objecting,) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

And it is further ordered by the court that a full and perfect inventory be taken by the receiver of all rolling stock other than the forty box cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been procured by the receiver and now on hand, and that he make report of the same on the eighth day of June next.

And as, in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court (reserving the right to rescind, change, or modify this order at any time hereafter) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee
431 railroad between Milwaukee and Portage City, jointly, operate said
road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company and the said receiver, jointly, employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company make keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds in prior mortgages as heretofore.

432 EXHIBIT NO. 24.

Order June 12, 1863, in eastern division foreclosure cause, putting Milwaukee and St. Paul Railway Company in possession, and order of April 28, 1864, vacating the same.

United States district court.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

June 12th, 1863.—A petition, in writing, of the Milwaukee and St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Co., and others, setting forth in substance that, in pursuance of a decree of this court in that case, the western division of
433 the La Crosse and Milwaukee railroad, between La Crosse and Portage
City, has been sold, and that said sale was confirmed and perfected; and that said Milwaukee and St. Paul Railway Co. is a corporation organized under the laws of the State, as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.

And the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Co., who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Railroad Co., in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Co, require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation. And the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Co.; and it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants and the subject of this suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one half of the whole amount of said mortgage, it is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee and St. Paul Railway Co. into possession of the eastern division of the La Crosse and Milwaukee Railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so
434 that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted, as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

435 GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILWAY COMPANY
and others.

April 28, 1864.—This day ordered by the court that the order of the 12th of June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road, be, and the same is hereby, rescinded; and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances and rolling stock received under said order, and all property relating to said eastern division.

436 EXHIBIT No. 24½.

Order of June 12, 1863, *in western division foreclosure cause.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863. Present: the Honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La
437 Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree; and also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

438 EXHIBIT No. 25.

Order vacating order of June 12th, 1863.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE R. R. CO. *et al.*

April 28, 1864.—This day ordered by the court that the order of the 12th June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road, be, and the same is hereby, rescinded, and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances and rolling stock received under said order, and all property relating to said eastern division.

439 EXHIBIT No. 26.

U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1864.

HANS CROCKER, *Receiver.*

Balance cash on hand, April 30, 1864		$103,947 74
Receipts :		
Freight earnings refunded		31 64
Foreign ticket balances		10 03
Exchange account, balance		422 65
Disbursements :		
Vouchers for cattle killed, &c	$177 00	
Right of way, east. division	400 00	
Legal expenses	15 00	
First mortgage bond coupons	33,105 88	
Milwaukee City do. do	597 10	
	34,294 98	
Balance cash on hand May 31, 1864	70,117 08	
	104,412 06	104,412 06

State of Wisconsin,
Milwaukee County, ss:

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee Railroad for the month of May, 1864, according to his best knowledge, information, and belief.

HANS CROCKER.

Subscribed and sworn to before me this 20th day of June, A. D. 1864.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

440 Exhibit No. 27.

Opinions of Judge Miller, in the United States district court, in the case of Bronson and Soutter against the La Crosse and Milwaukee Railroad Company, and in the case of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company.

441 District court of the U. S. for the district of Wisconsin, in equity.

Greene C. Bronson and James T. Soutter
v.
The La Crosse and Milwaukee Railroad Company, Selah Chamberlain, Sebre Howard, The Milwaukee and Minnesota Railroad Company, and others.

Miller, Judge.

This is a bill in equity upon a mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company to the complainants in trust, for the holders of the bonds mentioned in it. The deed was executed on the 17th day of August, and the bonds bear date September 1st, 1857. The bonds are sealed with the seal of the corporation, signed by the president and
442 secretary, and countersigned by the complainants as trustees, and are of one thousand dollars each to the amount of one million, payable on the first of September, 1870, with interest at the rate of eight per cent.,

with coupons annexed payable semi-annually, at the Bank of the Republic in the city of New York. The bonds are payable to the bearer thereof, and recite that they are for money borrowed by the company for the construction of their roads.

The deed conveys in trust, as security, all and singular the railroad of the company from the city of Milwaukee to Portage City, a distance of ninety-five miles, constructed and in full operation; and also the railroad of the company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by way of Columbus, to Midland, where it connects with the main line of the company's road, a distance of forty miles. And it includes all the road-beds, rights of way, improvements, and appurtenances, and all the property, real and personal, of the company to be acquired thereafter as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of the company in respect to said railroads from Milwaukee to Portage City and from Watertown to Midland, as fully as the same might be conveyed if said railroads had already been fully constructed and equipped. It is recited that the road from Milwaukee to Portage City is subject to a first mortgage on the same of nine hundred and fifty thousand dollars; that the first eighteen miles of said road is subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles is subject to a second mortgage of two hundred thousand dollars. These two last-named mortgages are to indemnify the city of Milwaukee for advancing her bonds in aid of the company.

443 The charter of the company empowers them to borrow any sums of money from any persons or corporations, at any rate of interest which may be agreed upon, without regard to the laws on the subject of usury, and to make and deliver all necessary writings, notes, bonds, mortgages, or other papers and securities of such amount and kind as may be deemed expedient by the corporation in consideration of loans. And by an act approved March 14, 1856, the company is authorized and empowered, in its corporate capacity, to make and deliver its bonds or obligations, and the directors are authorized to prescribe by resolution the sum for which each of said bonds shall be issued, the time and place of payment of the principal and interest, the person or trustee to whom they shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest such bonds shall bear, and the manner and form in which the coupons annexed to them shall be executed. And to secure the payment of such bonds the company is authorized and empowered, in its corporate capacity, to make and deliver a mortgage and deed of trust upon the whole or any part of its railroad constructed, or authorized to be constructed, and of all or any of their estate, real, personal, or mixed in possession or expectancy. And the company is authorized and empowered, by its agents or brokers, or otherwise, either in or out of this State, to sell, loan, pledge, hypothecate, or otherwise dispose of any or all of said bonds authorized to be issued, at par or at any price less than par, and for such sum or sums and on such terms as to the said company or its agents or brokers shall appear most for the interest of the company. And by an act approved October 10, 1856, any railroad company may borrow such sum or sums of money at such rate of interest and upon such terms as the directors may authorize, and mortgage its property and franchises and its road constructed or in process of construction.

444 The resolution of the board adopted August 8th, 1857, authorized the issuing of bonds to the amount of one million dollars, for the purpose of carrying forward the legitimate work of the company. All of said bonds shall be expressed to be for money borrowed for the construc-

tion of their roads, and shall be payable to the bearer thereof. Said bonds shall be convertible into the capital stock of the company, estimating both the stock and bonds at par, at any time within five years from the date thereof. And by another resolution of the board, the president is authorized to sell and dispose of all or any portion of the bonds, and to sell them, or any of them, at the rate of eighty per cent. of their amount, payable half in cash and half in stock of the company at par, or upon such other terms as he may deem proper.

A notice signed by the president of the company, dated at their office in the city of New York, August 10, 1857, and published, represented that "the importance of completing the road this season to the junction of the western division, sixty-one miles from Portage City, by which we could not only control the coming winter's travel of the Upper Mississippi, but receive 300,000 acres of our land grant, has decided the board of directors to place before the stock and bond holders extraordinary inducements to furnish the means necessary to accomplish the object. The sum required to meet the engagements of the company and finish the road sixty-one miles beyond Portage is $400,000.

"To obtain this sum the company now offers to holders of its stock and unsecured bonds, now so depreciated in market, a new issue of one million of eight per cent. bonds, payable in 1870, secured by a deed of trust to Greene C. Bronson and James T. Soutter upon the eastern division of its road from Milwaukee to Portage City, (subject to the prior liens mentioned in the deed,) and upon the line of road from Watertown to Midland, forty miles, which is subject to no prior lien.

"It was intended to issue this new loan exclusively to stockhold-
445 ers, receiving in payment four hundred dollars in stock of the com-
pany and four hundred dollars in cash for a bond of one thousand dollars; but it has been concluded to extend a like privilege to bondholders of *unsecured bonds* of the company which are outstanding, receiving such bonds with unpaid coupons upon the same terms as the stock.

"The subscription will be paid, one fourth of the cash payment at the time of making the subscription the remainder with the stock or old bonds, to be surrendered either at the time of subscribing or on the first day of September, when the new bonds will bear date and be ready for delivery.

"This will enable the holders of the bonds of the company which have no security, and are now so much depreciated, by adding a moderate amount in cash, to convert the whole into a mortgage, and bearing eight per cent. interest, amply secured against any contingency. As only about one fourth of the amount of such unsecured bonds outstanding can be received in payment for the new bonds, those desiring to avail themselves of this offer will see the necessity of an early subscription.

"Annexed will be found a form of subscription which can be filled up and returned by mail, *with a check* for the first instalment. Any subscriptions received after the loan is taken will be returned.

"Books are now open at this office.

"N. B.—To meet the views of those who have stock and would prefer to pay in bonds, it is understood that parties in this city will exchange bonds for stock."

From this circular and the testimony of Mr. Kilbourn, the president, it appears the object of making the issue of this million of dollars in bonds was to raise four hundred thousand dollars in cash; and he testifies that it was sup-
posed this sum would be sufficient, when added to the other resources of
446 the company, to secure the extension of the road to La Crosse. It
was proposed to offer the bonds to the stockholders at 80 per cent., payable half in cash and half in the stock or unsecured bonds of the compa-

ny, by which means it was supposed 40 per cent. in cash would be realized, making the gross sum of $400,000.

The bill charges that on or about the 26th day of September, 1857, the La Crosse and Milwaukee Railroad Company made a lease to Selah Chamberlain, and gave him exclusive possession of the road and property; and at that time the company was entirely and hopelessly bankrupt. It is also charged that Chamberlain did not pay the accruing interest on these bonds, which, according to his lease, he was bound to do. It is also claimed that the rolling stock was embraced in the deed or mortgage.

The defendants named, in addition to the La Crosse and Milwaukee Railroad Company, are proceeded against as subsequent incumbrancers, or purchasers, or otherwise.

Sebre Howard, one of these defendants, answers the bill, setting forth that on a note dated July 1, 1857, he obtained a judgment in the circuit court of Milwaukee County against the La Crosse and Milwaukee Railroad Company, on the 1st day of May, 1858, which was sued in this court and a judgment rendered in October, 1859. These facts appear on the record of the judgment, and are conceded by stipulation filed. This answer states that at the time of issuing the bonds set forth in this bill the company was wholly insolvent, and that the deed and bonds were contrived and executed by the company when the company was well known to its board of directors to be greatly embarrassed in its pecuniary affairs, for the corrupt and fraudulent purpose of disposing of the bonds, or a large portion of them, in payment of pretended debts to the officers and agents of the company, or their friends, without consideration, or in exchange for stock of the company, then of little or no value, held by its officers and agents or their friends;
447 and that in point of fact a large portion of said bonds were so disposed of and given away in violation of the charter, in fraud of its creditors, and of the defendants in particular; that two hundred of said bonds, being numbered from 651 to 825, inclusive, and from 851 to 875, inclusive, were delivered or given to Selah Chamberlain in pretended payment or satisfaction of a claim for services rendered the company, or for damages sustained by reason of the breaking up or surrender of a contract, which claim was wholly fictitious, and was greatly overestimated for the purpose of enabling him to receive the bonds; and the defendant insists that those bonds should be surrendered and cancelled. That one hundred of the bonds were given to Seth R. Foster as a security for a pretended indebtedness of the company, when the company was not indebted to him, and that these bonds were given to him without consideration, and fraudulently. That about fifty-five of the bonds were delivered to the complainant James T. Soutter, either without any consideration or as collateral to or in exchange for bonds of the company theretofore issued, corruptly and fraudulently and without authority by said company, known as "corruption bonds," or "Barstow bonds," and that Soutter gave no valuable consideration therefor; that the transfer of said bonds to him was fraudulent, and that they should be delivered up and cancelled. That fifteen of said bonds were delivered to Greene C. Bronson, the complainant, in exchange for stock of the company, which was nearly or altogether worthless; and that the company had no right to purchase from said Bronson said stock and pay for it with its money or bonds, and that the sale of said fifteen bonds was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled. That
448 about 600 of the bonds were disposed of at the nominal price of eighty cents on the dollar, one half in money and the other half in depreciated bonds or in the stock of the company, and that the company received for said 600 bonds only about one hundred and ninety thousand dollars in cash; that the company had no authority to dispose of those bonds

upon these conditions, and that they should be surrendered and cancelled as fraudulent and void.

This defendant admits that the company, on 27th Sept., 1857, made to Chamberlain the lease mentioned in the bill, and placed him in possession of the road and property, and by said lease he was to pay the interest on these bonds; that at that time the company was hopelessly insolvent, as stated in the bill; that the company had no lawful right to make said lease; it was void in law and was fraudulent and void as against the creditors of the company, being given and accepted for the purpose of carrying on the business of the company and to hinder and delay the creditors.

And on the second day of October, 1857, the company confessed a judgment to Chamberlain in this court for $629,089 72 for the same purposes, design, and objects of the lease and to support the lease, and the said judgment is fraudulent and void.

This defendant states that Chamberlain has received the proceeds of the road under said lease, and has neglected to pay the interest accrued on these bonds, and that he has contrived with Prentice Dow, the agent of the complainants, to make the non-payment of the interest the ground for this action.

Sebre Howard being a creditor of the company at the date of the bonds and deed in suit, with a judgment against the company in the circuit court, he is entitled to make defence to this bill. For this reason it is not necessary to refer to the answer of Graham & Scott, as judgment creditors, which is a mere repetition of Howard's answer.

449 Upon the petitions of John S. Rockwell and A. Fleming they were severally permitted to file answers in the name of the Milwaukee and Minnesota Railroad Company, defendant. It is proper for the court to make use of the testimony taken at the instance of Fleming in support of the answer filed by him, so far as the same sustains the answer of Sebre Howard. But it is to be understood that the court is not willing, by any act, to convey the impression that the mortgage to Barnes, and the sale upon it, and the organization under said sale in the name of said company, are not to be considered open to judicial inquiry on the part of creditors and stockholders of the La Crosse and Milwaukee Railroad Company.

The terms of subscription for the bonds contained in the circular of the president conveyed the idea of the company's insolvency; and it is also represented that the recital in the bonds, that they were issued for money borrowed to carry on the work, was not the whole truth. The proposition to sell the bonds at eighty per cent., one half in money and the other half at par in stock and unsecured bonds greatly depreciated, of the company then insolvent, was notice to purchasers that the company, in the desperation of its circumstances, was taking an undue advantage of the stockholders and general creditors who had no notice of the proposition. The bonds were thus offered and disposed of in the months of September, October, November, and December, 1857, at the time of the great pecuniary revulsion and panic, and when excitement was occasioned in New York by the company having made an assignment by way of a lease of the road and confessed a very large judgment to Chamberlain. Under these circumstances a general scramble for the bonds ensued on the part of all who had an opportunity as trustee, agents, or brokers of the company, until its credit became
450 entirely prostrate, and its object in issuing the bonds was frustrated.

Every man dealing in railroad securities in the city of New York could not avoid having notice of the extraordinary circumstances under which these bonds were being disposed of. It would be impossible to prove actual notice to them of the facts, but these being public securities offered by a company notoriously insolvent and bankrupt, and while a suit was pending in the city of New York to restrain the delivery of bonds of the company by the fiscal agent, upon the alleged faithlessness of the directors, it is fair to presume that such dealers had such notice. The very liberal laws authorizing the company to dispose of bonds, upon almost any terms, does not authorize the disposition of them to agents and brokers and trustees to the prejudice of stockholders and creditors. Directors of an incorporated company are trustees of the stockholders, and are bound to them for their management of the trust estate, and the company's property is a fund to be honestly applied to its debts by the directors. From the evidence, it does not appear that any large amount of bonds have passed from the first takers; and whatever have passed from them certainly did not at higher rates.

The bonds were not disposed of by the company in the ordinary transactions of business. The circular of the president was an application to stockholders and holders of depreciated bonds to contribute for their interest and in aid of an insolvent company, and was notice to all persons that the bonds were depreciated and only worth the terms proposed

Proof of the consideration of such bonds, and of the circumstances under which they were issued, should not be required to be as direct to purchasers of them as in case of the purchase of the negotiable paper of an individual. Purchasers of corporation bonds always rely upon the facts known of the condition of the corporation, which regulate the prices in market, and they will naturally inquire into the cause of the depreciation of such securities.

451 It is contended on the part of the complainants that the bonds being payable to bearer, are negotiable, and that no defense can be made to them. The object of the company in issuing them in that manner, with coupons annexed, was that they might be more available, and might command a better price in market. They are negotiable instruments, so far as they are made to pass by delivery, and give a good title to any person honestly acquiring them, and thereby enable the holders to sue in their own names. But being under seal, the bonds, if endorsed, would not enable the holder to charge the endorser by demand and notice, or protest as promissory notes, or bills of exchange. They are not strictly negotiable instruments under the law merchant; but as sanctioned by trade, and in this instance as authorized by law, they pass from hand to hand, vesting a legal title in the holder. But whether corporation bonds purporting to be issued in aid of improvements, or of the object of the corporation, are of such a character as to cut off all defense as against *bona fide* holders, because they are payable to bearer, is not necessary to be decided in this case.

The La Crosse and Milwaukee Railroad Company make no defense. The creditors made defendants, are left in their own behalf and of others equally interested, to answer the bill, and make defense.

This is a contest between bondholders, who claim the contents of their bonds to the full amount, and creditors, equally meritorious, who invoke the equitable interposition of the court for justice. With great confidence I will advance this proposition: that if an insolvent corporation in which its directors have little or no pecuniary interest, can issue bonds with a mortgage upon its property, and dispose of them in the manner these bonds were disposed of, and upon default in a suit in equity upon that mortgage, its general creditors should be precluded, because the bonds were payable to bearer, the greatest injustice will be done; and no sane man will
452 hereafter be a stockholder, or be a creditor of the company, unless
by bonds which he can immediately negotiate. A due regard to the administration of justice forces upon the court an inquiry into the consideration of the bonds included in the deed.

Mr. Dow testifies that he was transfer agent of the La Crosse and Milwaukee Railroad Company, from July to October, 1857. That the bonds were disposed of in the city of New York, during the months of August, September, October, November and December, 1857. They were proposed to be sold at 80 cents, one half in cash, and one half in stock, or unsecured bonds of the company. Subscriptions were made for the bonds, to the amount of 500,000 dollars; upon which there was paid about 165,000 dollars, and 40,000 dollars in notes of the contractor, stated by Mr. Kilbourn to be the same as cash. He does not know the precise amount of the stock, or the unsecured bonds received upon these subscriptions, the books having been left with clerks, and he does not know what became of them.

One hundred of the mortgage bonds were paid to one S. R. Foster, upon a claim by him of deficiency of security for loans he had made the company upon pledge of its capital stock. Fifteen of the bonds were paid to Greene C. Bronson, one of the complainants, upon a claim by him of a large sum for legal services, he at the same time transferring 150 shares of the stock of the company.

Ten of the bonds were sold to Alfred Noxon, at forty-seven and one-half per cent., paid for partly in cash and partly in reduction of the notes of the company. Two hundred of the bonds were paid or sent to Selah Chamberlain, the contractor. Stephen H. Alden subscribed for 100 bonds, a part of the 500. He paid for them by four notes of Chamberlain, the contractor amounting to $40,000 referred to above. He also paid in cash about twenty thousand dollars. These two payments with allowance for interest
453 being $60,000. At the same time Kilbourn gave Alden a check for ten thousand dollars, which was a discount or allowance, reducing the price of the bonds to fifty per cent. of their par value. The other subscribers paid generally according to the terms of their subscription. The remaining bonds not delivered were handed over to Stephen Clarke, president of the company, in November, 1857. It appears in the evidence of Mr. Stanton, who succeeded Mr. Clarke as president, that there were eighty-nine bonds delivered to Clarke, of which he, Clarke, delivered sixty-five to Stanton, "which were disposed of as directed by the board of directors of the company by paying and appropriating the proceeds of those sold for the same purpose." He does not state how many of them were disposed of by him, or at what price, nor are we informed what Clarke did with the ten bonds he retained. D. E. Wheeler was a subscriber for a considerable number of the bonds at sundry times. He paid for them in cash and stock and other bonds, upon the same terms as other subscribers. Mr. Dow testifies that S. R. Foster subscribed for fifty of the bonds and paid for them forty per cent. in cash, and forty per cent. in bonds of the La Crosse and Milwaukee Railroad Company, called or known as the St. Croix and Lake Superior railroad bonds. Foster loaned the La Crosse company, as nearly as witness can remember, about ninety thousand dollars upon the pledge of three hundred thousand dollars of the stock of the company, and also 75,000 upon the pledge of another large amount of stock, 800,000 dollars or more. Sometime afterwards Foster claimed that his security was insufficient, and Mr. Kilbourn gave him one hundred of the second mortgage bonds as additional security. And the witness was informed that the company subsequently settled with Foster this loan, giving him forty thousand dollars in land grant bonds in full for his claim for deficiency.

Jackson Hadley was secretary of the company from April, 1857, to
454 May, 1858. He testifies that the issue of the bonds was for the purpose of raising money to carry on the work. The bonds subscribed for were to be paid for at the rate of eighty per cent., payable forty per cent. in cash and forty per cent. in the stock or unsecured bonds of the company.

Some bonds were hypothecated for money borrowed, some were delivered to Selah Chamberlain, some exchanged with Greene C. Bronson for stock, some withheld from the company by James T. Soutter, and some retained by Prentiss Dow There were ten thousand dollars returned to Stephen H. Alden to reduce the amount of bonds he bought to fifty per cent. All the issue of bonds were delivered to Mr. Soutter and Judge Bronson for their signatures as trustees. They signed them, and returned portions of them from time to time to the office of the company in New York City. All were returned except sixty-five, which Soutter refused to return or deliver to the company, alleging that he retained ten of them for services of himself and Judge Bronson as trustees, and fifty-five of them to secure the payment of certain unsecured bonds of the company, which he claimed that he had purchased some time previously for certain friends of his, who were, as he said, liable to be large losers by reason of the depreciation of the value of such unsecured bonds so purchased by him, and that he determined to hold these fifty-five bonds for their benefit.

Prentiss Dow was the chief clerk and financial agent of the company in New York at the time; and in that capacity negotiated for subscription for said bonds, and received pay for them. Mr. Dow also proves the same, and that the money was paid to him, or to the clerks in the office. When the first of the bonds were delivered the stock was selling in New York at twenty-seven cents. At the time the last was delivered it was down to five cents, as witness Hadley recollects. It was down to five cents within sixty days.

455 Mr. Hadley also testifies that in December, 1857, and in January, 1858, the Albany and eastern directors, then constituting a majority of the board, and composing the executive committee or a majority of it, by resolution did cause to be executed and sold two million five hundred thousand dollars in unsecured convertible bonds with coupons, bearing two per cent. interest per annum, payable semi-annually. These bonds were to be converted into stock at the option of the holders thereof. They were ostensibly sold by a committee of the Albany directors, at ten cents on the dollar, as accounted for to the company. They were immediately converted into stock in the New York and Albany office, and the stock sold at the brokers' board in New York City in daily amounts, as the market would bear it, from eleven to fourteen cents. Twenty-five thousand shares of the stock were issued to Stephen Clark, president, to retire these two million five hundred thousand dollars of two per cent. convertible bonds. In addition to the foregoing stock, the amount of stock hypothecated before that was 1,500 shares with Alfred Noxon, 1,500 shares with Stephen H. Alden, and 7,800 shares with S. R. Foster.

Notwithstanding it was estimated that the four hundred thousand dollars would complete the road to La Crosse, it appears that these two and one half millions of bonds converted into stock were issued about the same time, one and one half millions were added to the land grant mortgage. And it is in evidence that in June, 1858, the company issued bonds to the amount of two millions of dollars payable at the Albany Exchange Bank, with interest at seven per cent. on the first days of January and July in each year, secured by a mortgage of the road to William Barnes, of Albany. And after default of the payment of the first six months' interest William Barnes, the mortgagee, advertised and sold the road, and bought it in, and the whole nominal amount of the mortgage, for the use of the bondholders, without objection on the part of the directors. And on that
456 sale the Milwaukee and Minnesota Railroad Company was organized. This vast increase of the debt of the company, and this complication of its condition, no doubt tended to continue the depression of these bonds in the market.

Mr. Dow was removed from the office of transfer agent, on account of difficulties with the old board. And he was appointed, by the new board, agent of the company for the settlement of claims, some time in the winter of 1857-'8; and held the appointment until March, 1858. He testifies that he has been the holder of second mortgage bonds of the company, having received thirteen of such bonds in September and October, 1857, from the company, for the consideration of eleven thousand four hundred dollars paid to the company in other bonds of the company theretofore issued, in the capital stock of the company, and in cash. He has also bought and sold many of said bonds in open market, buying for cash, or with notes of the purchasers, with the bonds as collateral security to them, at the current market price; and he has sold in the same manner and upon like terms. The current market price varied from thirty per cent. to fifty-six per cent. of the par value of the bonds. His bonds have for the last two years been, and are now, in the hands and under the control of his son in New York, who has full power to dispose of them as he pleases. He had on the first of January, 1861, eighteen of the second mortgage bonds. He does not know of any of the second mortgage bonds being fraudulently issued. As transfer agent, the care of transfers of stock was with him. He had duplicate keys of the safe in which the bonds were deposited as they came into the office from the hands of the trustees, by whom they were registered and countersigned. Generally over two hundred bonds at a time were in the office. The bonds were sometimes delivered by H. L. Richards, sometimes by Robert K. Dow, and sometimes by himself. He received
457 of the company two of the second mortgage bonds in September and
eleven in October, 1857, for which he paid in cash $750, in capital stock of the company fourteen shares of one hundred dollars each, $1,400, in the stock of the company known as privileged stock issued with the land grant bonds $250, in the bonds of the company theretofore issued for the purchase of the St. Croix and Lake Superior railroad, and in the land grant bonds $5,000, making in all $11,400.

There is a mass of testimony of the same nature which need not be noticed. I have extracted this much for the purpose of ascertaining as nearly as possible what amount the company received for the million dollars in bonds, and what the purchase of them by the different persons really cost them; my object being to do as nearly as possible equal justice to the purchasers and the creditors of the company. It is regretted that the books of the transactions of Mr. Dow, agent and clerk of the company, were not in evidence, as from them it might possibly, with his explanations, be ascertained what each person actually paid, and what the stocks and unsecured bonds were actually worth at the different dates of delivery. The statement annexed to the deposition of Stanton is not reliable, as it wants authenticity, and nearly all the transactions bear date of the first of September, which is not correct according to the testimony. There is no reason for concluding from the evidence that the bonds rose in market after the first issue, but it may fairly be inferred that there was a great decline. There are no means of ascertaining the actual consideration of the fifty-five bonds Mr. Soutter retained. In September, 1858, William A. Guest, as chairman and vice-president of the company, gave him a receipt for fifty-five farm mortgage bonds and convertible bonds in lieu of the fifty-five bonds he retained; but what those bonds cost him or what he got for the bonds of the company does not appear. He and Judge Bronson were entitled to a reasonable compensation for their services, and they retained twenty five bonds for
458 that and the stock returned. The eighty-nine bonds handed over to
Mr. Clarke may be supposed were consumed by the board of directors without much benefit to the creditors or stockholders. The transactions with Foster and Alden were extraordinary; and the amount realized

by the company cannot be readily ascertained. Dow, the fiscal agent, paid but a small portion in cash for the thirteen bonds claimed by him, and he does not inform us what the stocks and bonds he paid were worth in the market at the time of his purchase of the bonds. Bonds of the St. Croix and Lake Superior Railroad Company were used in part by Dow and Foster in their purchase of the bonds.

On settlement with Mr. Alden the president of the company considered these mortgage bonds worth fifty cents on the dollar. Mr. Chamberlain also estimated them at that rate, and so credited them. It is not probable that the company realized that amount out of the issue. Some of the first purchasers did not pay that amount; and it is certain that subsequent purchasers did not. As there is no way of identifying the bonds as they were sold or disposed of, except by the statement annexed to Mr. Stanton's deposition, which is not reliable, other than the bonds delivered to Chamberlain, and as an effort to trace out the real transactions connected with the different sales or transfers might consume time and expense unprofitably, and as it is neither the interest of the bondholders nor of the creditors that this litigation should be prolonged, the master will be directed that the principal of the mortgage shall be stated at five hundred thousand dollars, and that he report the interest due and unpaid on that sum. If, by possibility, there should be holders of bonds who actually paid over that sum, the amount is made up to them by the receipt of three payments of interest on the whole amount.

459 As it regards the bonds delivered to Selah Chamberlain, which he credited on the allowance for damages at fifty per cent., it is not necessary now to determine whether the credit is properly made or not. He, it is understood, is a creditor of the company, and when the decree comes to be made it may direct how the amount on his bonds may be applied.

The Milwaukee, Watertown, and Baraboo Valley Railroad Company, defendant, by its attorney, filed an answer setting forth that "it became the purchaser, for a valuable consideration, from the La Crosse and Milwaukee Railroad Company in the month of December, 1857; that it is under no covenants or obligations to pay any part or portion of the debt to the complainants in trust; and that all the western division of the La Crosse and Milwaukee Railroad, including that part of the road described in the trust deed, became the property of this defendent in virtue of such purchase. And it prays that the decree of this court may direct that the portion of said mortgaged premises so purchased, and in the possession of this defendant, may be excluded and exempted from sale to satisfy said decree, until after all other parts or parcels of the mortgaged premises, or such parts thereof as may be necessary to satisfy such decree, be sold.

"It appears that by a release of the La Crosse and Milwaukee Railroad Company, dated December 20, 1858, to this company, defendant, all liens and interests were released, (except those mentioned,) which included the sum of $283,000, part of the mortgage in suit, which by the deed from the La Crosse company of the 24th December, 1857, were to be paid, and to be considered a lien on the forty-two miles to Midland. As far as I see at present, it would be right to decree that portion of the mortgaged premises to be sold last, and not at all unless necessary to pay liens."

460 District court of the U. S. for the district of Wisconsin, in equity.

Greene C. Bronson, James T. Soutter, and Shepard Knapp,
vs.
The La Crosse and Milwaukee Railroad Company, J. A. Helfenstein, trustee, and others.

Miller, Judge.

An act of Congress, entitled "An act granting public lands to the State of

Wisconsin, to aid in the construction of railroads in said State," approved June 3d, 1856, granted to the State, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sec-
461 tions in width on each side of said roads, respectively. And it is
provided that the lands shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and they shall be applied to no other purpose whatsoever. And that the lands granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid, and no other. And the act further directs that the lands shall be disposed of by said State only in this manner. That a quantity of land, not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold; and when the governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold; and so on, from time to time, until said roads are completed.

By an act of the State legislature, approved October 11, 1856, the lands granted to the State on the route to the west end of Lake Superior, and to Bayfield, from Madison and Columbus, were granted to the La Crosse and Milwaukee Railroad Company upon the conditions mentioned. It is directed by this act that the roads from Madison and Columbus to Portage City shall be constructed and completed by December, 1858.

And it is provided that the lands shall be exclusively applied in the construction of that road for which it was granted and selected; and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatsoever.

The act then provides that the title shall vest in the company in the same manner as, by the act of Congress, it shall vest in the State, and makes it the duty of the governor to give the certificates to the Secretary of the Interior, and to execute to the company a deed for the lands as it may become entitled to them. And it is provided that the company shall not sell any of the lands until twenty miles are completed so as to admit of run-
462 ning regular trains over the same; and so on, from time to time, so
that the sales of lands by the company shall never exceed six sections of land for every mile of road so completed. For the grant, the company is to pay into the State treasury four per cent. of the gross earnings. The company is authorized to mortgage, or pledge, or otherwise dispose of, all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted the company by the act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

On the 11th of December, 1856, the board of directors of the company adopted resolutions to make a trust deed to the complainants and to issue bonds to the amount of ten million dollars. On the 31st of the same month the company made its trust deed in the nature of a mortgage, in pursuance of those resolutions, whereby it did grant, bargain, sell, and convey to these complainants all and singular the several tracts, pieces, or parcels of land, which are or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, depots, and all other lands constituting the roads of the

company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and all the superstructure on said road, and all the locomotive engines and other rolling stock, and all equipments which have been or may be procured for or used on said roads or either of them, and all tools, &c., and other personal property which have been or may hereafter be procured, and all the rights, liberties, privileges, and franchises of said company, of every kind and description, relating to said roads, and also all the lands granted, or intended to be granted, to the company under or by virtue of the act of Congress and the act of the State legislature, so far as the lands pertain or are applicable to the construction of said roads from Madison, by
463 way of Portage City, to the St. Croix River or Lake, estimated at one million of acres. The deed is intended to convey all present and future interest in the road and property and the lands.

Bonds were made of one thousand dollars each, on different days from the 1st of January to the 14th July, 1857, to the number of twenty-five hundred, amounting to two and one half million dollars. They were under seal, and payable to bearer in the city of New York on the first day of February, 1877, with interest, payable semi-annually, at the rate of seven per cent. per annum, and coupons annexed.

January 28th, 1858, the company by its new board of directors, of which Stephen Clark was president, made an indenture or agreement with these complainants as trustees, in which, after reciting the former mortgage or trust deed and its contents, and reciting that twenty-five hundred bonds, amounting to two and one-half million of dollars had been issued, and for the most part negotiated, and the company being engaged in the construction and completion of that portion of the road between Portage City and La Crosse, with the necessary depots, stations, &c., and appurtenances, it will not be necessary to issue bonds under said deed or trust mortgage to an amount exceeding in the whole more than four millions of dollars including those already issued. In consideration of the premises and for one dollar to the said company in hand paid, and in order to secure the bonds issued and to be issued within the amount of four millions of dollars, and to induce the future taking of said bonds, as well those issued as those to be issued, the company, covenants, grants, and agrees with these complainants by name as trustees, that no more than four millions of bonds shall be issued. Similar provisions are then covenanted for as contained in the mortgage of December, 1856, relating to taking possession and proceedings in case of default of payment, as well on the bonds issued as those to be issued. And the company further covenants that the lands owned by the company in La Crosse shall be appurtenant to the road, and also the lands granted,
464 so far as they pertain to the construction of that part of the road from Portage City westward to the junction at Tomah, being a distance of sixty-one miles from Portage City, embracing about three hundred and seven thousand two hundred acres, shall be by said trustees disposed of and applied in the first instance to the payment of whatever sums may be due or owning on the four millions according to the deed of trust, and the surplus shall be divided *pro rata* among the holders of such certificates as may be issued in connection with the bonds, allowing the holders of privileged stock which has been issued in connection with such bonds a proportion of the surplus. Then follows a form of such certificate.

The next day after the date of this agreement, January 29, 1858, there were issued four hundred bonds of one thousand dollars each and one hundred bonds of five hundred dollars each, amounting to four hundred and fifty thousand dollars. February 12, there were issued 300 bonds of one thousand dollars; February 15 there were issued 150 bonds of one thousand dollars each ; and February 16 two hundred bonds of one thousand dollars each, amounting in the aggregate to one million five hundred thousand dollars ; and which, with the bonds issued, make four millions. They were under seal, and payable to bearer in the city of New York, the same as the first bonds.

J. Albert Helfenstein, who is a party defendant, awswers that the company on the 26th day of September, 1857, did execute and deliver to him a mortgage or trust deed, as trustee, (reciting, for the purpose of constructing their road from Madison to Prescott, at the mouth of the St. Croix River or Lake, on the Mississippi River, and putting it in order, the company agreed to borrow one million of dollars and to issue its bonds therefor,) of all their lands which constituted or might constitute or be a part of the roads from Madison, by way of Portage City, to Prescott, and from Portage City to La
Crosse, and all the road, &c., whether then made or to be made, and
465 all the appurtenances, and the locomotives and rolling stock and that
to be acquired, and all the franchises, and also several tracts of land in Pierce County, in this State. And also, on the 2d day of October, the company made its bonds under seal, payable to the bearer on the first day of October, 1860, at the rate of eight per cent., in New York. And the bonds issued amounted to three hundred and sixty-eight thousand five hundred dollars. The last date of their issue was December 17, 1857.

He claims that in case of a decree of sale on the bill, the part of the premises not covered by this mortgage may be decreed to be first sold ; and in case of sale of that portion of the premises covered by his mortgage, the proceeds of sale may be applied to his mortgage. And he claims a preference to the fifteen hundred bonds issued on and after January 29, 1858.

An amended answer of Mr. Helfenstein states that at the time the trust deed mentioned in the bill was made no part of the line of the road from Madison, by way of Portage City, to the St. Croix River or Lake, and from Portage City to La Crosse had been constructed, nor in existence, nor in process of construction, nor had the company acquired the right of any, nor did the company then own the land now occupied by the line of road, and on which so much of the road as extends from Portage City to La Crosse has since been constructed, and that the said deed is not a lien upon the said line of road.

And it is alleged that of the issue of bonds under the complainant's trust deed, only nineteen hundred and ninety-one bonds, amounting to nineteen hundred and ninety-one thousand dollars, were actually issued and disposed of by the company prior to the execution and delivery of his deed and bonds; and that the remainder of the four millions were issued and disposed of after.

Mr. Helfenstein's mortgage does not cover the land grant.

On the day of the date of this mortgage the company made a lease of
their road from Milwaukee to La Crosse, and of rolling stock, to Selah
466 Chamberlain, and put him in possession. And on the second day of
October, 1857, the same date of the bonds issued under this mortgage, the company confessed a judgment in this court in favor of Chamberlain for an amount of over six hundred thousand dollars.

The company under the complainants' mortgage made bonds to the number of twenty-five hundred, at several times, commencing in January, 1857, and running through the months of February, March, April, May, June, and to the fourteenth of July. And issued all but five hundred and nine before the twenty-ninth day of January, 1858. The same board that made the mortgage and those bonds made the lease and confessed judgment to Chamberlain.

In the month of November, 1857, the board of directors was changed by electing a majority of members residing east. On the 28th January, 1858, the board made the agreement above recited, whereby bonds were to be issued under the mortgage to complainants, to an amount not exceeding four millions of dollars, including those already issued. This was an attempt to increase the amount then issued under the mortgage one million and a half dollars. The company ceased making and issuing bonds in the month of July, 1857, and in August made a second mortgage of one million of dollars on the road to Portage City, and in the month of September made the mortgage to Helfenstein. From these facts it is fairly inferable that all intention of making and issuing more bonds under the mortgage in suit had been abandoned. It is not to be presumed that the company intended a fraud upon the holders of the Helfenstein mortgage bonds, by delaying the making and issuing of bonds under this mortgage, with the intention of resuming after the bonds under the Helfenstein mortgage were disposed of. The lease to Chamberlain was similar in legal effect as to bankruptcy, as an assignment of an insolvent debtor for the payment of debts. It put an end to the works and operations of the company in its own name, and it was a surrender of the works into Chamberlain's hands, and an abandonment
467 of the extension by the company of the work on the line of the land
grant road. I cannot have a doubt but that the fifteen hundred bonds, as a lien on the road, should be postponed to Helfenstein's mortgage. After the delay in issuing bonds from July, 1857, to January 29th, 1858, under the first mortgage, it should be considered in the light of a mortgage, to secure advances, whereas to intervening liens, advances are to be held as new mortgages, and are liens only from their respective dates.

By the amended answer of Helfenstein objection is made that the mortgage in suit is not a lien on the road, as work on the line of the road had not been commenced on the day of its date. I think some work had been commenced. By the act of the legislature granting the lands to this company authority is given the company to "mortgage all their claim, right, title, or demand of, in, or to any lands granted to said company, by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper." This statute authority disposes of the objection to the want of title, both as to the lands on which the road was located and made and to the lands granted by government. The company could mortgage lands and property to be acquired, and if acquired afterwards the lien attached. And without the act, I think there can be no doubt of the principle of equity that where a mortgage was made of an estate to which the mortgagor had not at the time good title, yet having afterwards acquired one, it would enure to the benefit of the mortgagee. Courts of equity will support mortgages, fairly entered into, of things and estates which have no present existence, and the lien will adhere to the property when acquired by the mortgagor. Whatever interest the company has acquired or has a right to acquire in the road and property appurtenant thereto, and in the lands covered by the road, and also in the lands granted by govern-
468 ment according to the conditions of the grant, they are covered by
complainants' mortgage.

In the amended answer of Helfenstein it is averred that the last issue of bonds under this mortgage was made to directors in fraud of the stock and bond holders, and that the fifteen hundred bonds were sold at thirty cents on the dollar. This being a controversy involving their rights, (the company making default,) several holders of bonds of the first issue under this mortgage petitioned the court for leave to become parties. And on an order that the bill be amended making them parties defendant their answers were filed. In those answers they deny that the company has issued any bonds under this deed to a greater amount than two million five hundred thousand dollars, in bonds of one thousand dollars each, and numbered from one to two thousand five hundred, inclusive. The answers allege it is not true that at the time of the execution of the deed, on the 28th of January, 1858, the company was engaged in the construction and completion of that portion of the road between Portage City and La Crosse; nor is it true that any of the bond amounting to one and one half million of dollars, issued after the 28th of January, 1858, were issued, or the avails used in constructing or completing any part of the road between Portage City and Tomah, called the Junction, or any part of the road called the land grant road; but the entire road from Portage City to Tomah was complete and paid for by the two and a half millions of bonds and their avails, and the last bonds were issued for the purpose of constructing the road from Tomah to La Crosse, and that they were issued in violation of the acts granting the land, and of the deed of trust, and without the knowledge of the first bondholders.

The answers also set forth the mortgage to Helfenstein, and the insolvency of the company, and the lease to Chamberlain of the entire road and rolling stock of the company, and his possession under it. And that the
company having parted with its property and ceased control of it, the
469 subsequent issue of bonds was a fraud upon bondholders and creditors.

The answers also state that only four hundred and fifty thousand dollars was realized out of the issue of fifteen hundred bonds, which were surreptitiously obtained and taken by certain directors, who sold the same and agreed to account and only accounted at the rate of thirty cents on the dollar, who sold them at a greater price. And that the price of $450,000 for completing the road was extravagant, that the same was not worth more than $200,000, and that the whole transaction was a fraudulent collusion between directors and contractor. And that all the facts relating to said company here set forth were known to every person interested in or dealing in the securities of the company. And the answers pray that the holders of the last issue should not be put on an equality with them.

By the instrument under which the fifteen hundred bonds were issued the remedies granted to the mortgagees by the first mortgage are changed in some particulars. The land is converted from a primary to a secondary fund, and the roads between Madison and Portage City and between St. Croix and Tomah were abandoned, which destroyed the lien on the land grant as to these bonds, except between Portage City and Tomah. By this it would appear that the completion of the land grant road was abandoned. And if the road had then been completed to Tomah, it in fact appropriated the proceeds of the fifteen hundred bonds to the completion of the road from Tomah to La Crosse.

By an agreement between Vose, Livingston & Co. and Stephen Clark, the president, on behalf of the company, dated January 28, 1858, the company was to make the agreement above referred to of that date; and the company agrees to procure Selah Chamberlain to so modify his lease that the net revenues of the road from Portage City to La Crosse shall be applied in the first instance to the payment of the interest on the four millions issued and to be issued. The company agreed to stop the issue of bonds on previous
mortgages named; and they agree to procure an agreement from
470 Chamberlain that the judgment of Chamberlain shall be subsequent
in lien to the four million of land grant bonds. The company shall pay punctually the interest due the first of February, 1858, on the land grant bonds held by Vose, Livingston & Co. and all others outstanding. Vose,

Livingston & Co. agreeing that upon the compliance of these agreements they will discontinue the suit pending, restraining the issue of land grant bonds, provided that the fifteen hundred bonds be applied to the completion of the road to La Crosse by Chamberlain for the said bonds.

And by an agreement of the same date between the company and Vose, Livingston & Co., and Alfred Noxon, Seth R. Foster, and John H. Reynolds, which recites that Chamberlain has contracted to complete the road from the Junction to La Crosse, a distance of fifty-four miles, and to receive in payment therefor fifteen hundred bonds, of one thousand dollars each, of the company, issued under the mortgage of December 31, 1856, as modified by an instrument of this date; and as the party of the second part have guaranteed the performance of such contract, and the said 1,500 bonds have been delivered to Chamberlain, and as Vose, Livingston & Co. are holders of a large amount of the land grant bonds heretofore issued, and having an injunction restraining the further issue of bonds upon the ground of apprehended improvidence and misuse in the application of them, or their proceeds, have consented to the dissolution of the injunction, it is agreed that the 1,500 bonds be deposited by Chamberlain with Joseph M. Lovett, cashier of the Albany Exchange Bank, in trust as security for the performance of his contract for completing the road from the Junction to La Crosse. The bonds are to be parted with to Chamberlain as he progresses with the work. But if Chamberlain and the parties interested in said bonds shall desire to make sale of them prior to the time when they would be deliverable, such sale
may be made, provided the price shall not be less than thirty per cent.
471 of their par value, and that the money shall be received and held by
Lovett upon the same trusts as the bonds. And when there shall have been provided in all four hundred and fifty thousand dollars subject to be drawn by Chamberlain as his contract is completed, the balance of such proceeds shall stand in the hands of Lovett to the credit of Noxon, Foster, and Reynolds, parties of the second part, subject to be drawn for in like proportionate instalments; and if all the bonds be sold, the last portion standing to the credit of the parties of the second part may be withdrawn at the expiration of sixty days from the time the last sale shall have been completed. By a previous agreement between Chamberlain and the company, dated January 2, 1858, Chamberlain agrees that upon receiving land grant bonds and privileged stock to the amount of one million five hundred thousand dollars each, he will deposit all the said stock and bonds in the Albany Exchange Bank as security; that Noxon, Foster, and Reynolds are agreed upon as a committee to negotiate said bonds and privileged stock at a price not less than thirty per cent. upon the par value of said bonds, and they are authorized and required to sell and negotiate them as soon as practicable for the purpose of completing the road under the contract of January 1, 1858. A certificate of stock amounting to $1,000 is to be annexed to each bond.

It is shown by these agreements that the contract with Chamberlain was to build the road from Tomah to La Crosse; that the committee named as sureties for the completion of the work took control of the bonds with certificates of stock annexed, out of which they were to realize for Chamberlain four hundred and fifty thousand dollars for his compensation. And Vose, Livingston & Co. consented to this arrangement, and withdrew their injunction.

And on the 28th of January, 1858, Selah Chamberlain in writing modified his lease so that the revenues of the road should first be applied to the
interest on the four million dollars in bonds. Chamberlain testifies
472 that his contract dated January 1, 1858, was to finish the road from
the Junction to La Crosse for fifteen hundred land grant bonds of
$1,000 each, to be issued, and which were issued. He had an agreement

with the committee that he should receive four hundred and fifty thousand dollars for finishing the road between those points. He gave receipts for the bonds, but they did not come to his hands. Clarke and Noxon came to Milwaukee in March, 1858, and informed him that Vose, Livingston & Co. were about getting out an injunction to restrain the selling of the bonds, and they procured a receipt for them, promising to pay him thirty per cent. The receipt is for one million and one half in bonds in full of contract.

By the testimony of Mr. Dow, the transfer agent, five hundred and ninety-thousand of the first issue of land grant bonds were delivered by him to Stephen Clark, the president, in November, 1857, and were paid out during January and February, 1858. The last issue were numbered from 2,500 up to 4,000.

Charles A. Meigs, a broker in New York, testifies that in the month of February, 1858, the land grant bonds sold from 34 to 41 per cent.; in March, from 35 to 39; in April, from 30½ to 35; in May, from 31 to 34; in June, from 30 to 33. He sold bonds of this description for Alfred Noxon. The bonds were sold to persons residing over the country. No distinction was made as to the numbers; they were regarded as standing alike. These bonds were sold for Noxon and Foster from February to May, 1858, to the amount of $323,000, beginning at 50 cents and running down to 33¾ cents; and in April he bought for account of Noxon $30,000, at 31½ to 33 cents.

George H. Broadhead was a member of the board of brokers in New York. The land grant bonds sold from the 1st October, 1857, to the 31st July, 1858, at from twenty to fifty cents on a dollar. The sale at twenty cents was on the seventh day of November, 1857. The sale at fifty cents was on the 26th day of January, 1858. The average price was about 473 thirty-five cents, and from July to December they sold as low as thirty cents. The highest after that time was in January, 1858, when they sold from thirty to fifty cents, and in February at thirty-five to forty-two cents.

Seth R. Foster testifies that he was a director of the company, Stephen Clark was president, D. E. Wheeler, Alfred Noxon, George W. Luther, and D. Radcliff, were directors, residing in the State of New York. He cannot tell to whom the bonds were delivered, but his impression is that they were delivered to Alfred Noxon and himself; cannot tell whether any of the bonds were delivered to Mr. Lovett. He does not give any facts more definitely, his memory having failed him.

Alfred Noxon does not know whether the company was insolvent or not in the month of January, 1858. He took four or five hundred of the bonds from the trustees after they were signed, but he does not know who took the balance. He thinks he delivered the bonds to Mr. Clark, but if not to Clark, then to Mr. Dow, or some other officer of the company. It is impossible to state to whom. They were between numbers 2500 and 4000. Does not know of bonds numbered from 2500 to 4000 being deposited with the Albany Exchange Bank. He received those bonds of the trustees in February and March, 1858. He sold between two and three hundred thousand dollars of them, but does not recollect their numbers. Cannot say that the amount was greater; it could not have exceeded five hundred thousand; they were sold through brokers at different times. He has only the broker's account of sales. He kept no account, and if the broker's account is in existence, it is in Crescent, New York. The account was not rendered to the company. The proceeds of sales were deposited in the Albany Exchange Bank, in Albany. Seth R. Foster had handled and sold perhaps half a

million of the bonds. All the general books of the company were
474 taken to Albany. The meetings of the directors and other business
of the company were transacted there. He does not know that Foster accounted for the bonds. Chamberlain's order for the bonds was given witness in the winter or spring of 1858.

It is proven that Vose, Livingston & Co., being holders of nearly a million in dollars of the first issue, brought a suit in chancery in New York, against the complainants in this suit, Prentiss Dow, and the company to restrain them from signing, negotiating, pledging, or in any manner disposing of the bonds secured by the mortgage of December, 1856, to the amount of $484,000. The suit was commenced in September, 1857. A temporary injunction was issued, and it continued in force until January 28, 1858, when by stipulation the suit was discontinued, and the injunction dissolved. This was on the modification of the mortgage as a condition, and also on a modification of the lease by Chamberlain, and upon his agreeing to give the bonds to be issued a priority to his judgment.

The bill in that case charges false representation of officers of the company, the lease and judgment to Chamberlain, and the insolvency of the company; and that the officers of the company have heretofore so misapplied the said bonds and their proceeds, and so manifested their untrustworthiness, as that the security of the plaintiffs and the other bona fide holders of the bonds secured by said mortgage, requires that the company and its officers shall no longer be trusted with the disposition of those bonds which have not been sold or absolutely disposed of. The bill prays a perpetual injunction.

Vose, Livingston & Co. accepted for iron sold near one thousand of the bonds first issued under this mortgage at 80 cents on the dollar, with the privilege of subscribing to stock in the company to the amount of five hundred dollars to each bond, subject only to paying five dollars on a
475 share when subscribing, and no further assessment to be called for
until the road is completed and the land is exhausted in liquidation of the bonds. And it seems that the last issue of bonds had annexed to each bond a certificate of preferred stock to the amount of one thousand dollars. These certificates of stock were annexed, no doubt, with a view of giving the bonds some buoyancy in the market.

It is objected that the second issue of 1,500 bonds were authorized by the board in the city of Albany, New York, and not in Milwaukee, and that for this reason the bonds should not be adjudged legal obligations. It appears that the seal of the company was carried off from Milwaukee to Albany, and a bond and stock machine was run there under systematic efforts of the directors to increase the debt of the company at the rate of one thousand dollars for one hundred realized by them. But the bonds representing on their face to have been legally issued, and in the form of those of the previous issue, this objection cannot be made after they passed from the company. Persons purchasing the bonds were not bound to look further than to the representations on their face and to the mortgage.

This brings me to the point raised, that the fifteen hundred bonds were not applied to the land grant road, but were applied to building the road from Tomah to La Crosse.

The supplemental agreement of January 28th, 1858, under which the last issue of bonds was made, provided that the entire proceeds of the sales of the lands granted to the State, so far as they pertain to or shall be derived from the construction of that portion of the road from Portage City to the junction at Tomah, shall be by the trustees disposed of, and applied in the first instance to the payment of what may be owing on the four millions of bonds, in accordance with the provisions of the original deed. From the proof there can be no doubt but that thirty per cent. of the fifteen hundred bonds was applied to the building the road by Chamberlain from 476 Tomah to La Crosse. This was a misapplication of money raised on the credit of the land grant, against the direct prohibition of the act, as that portion of road is not on the line of road designated in the grant. But upon the face of the bonds and the provisions of the original deed of trust, and the supplement, were the purchasers of the bonds obliged to look to the application of the funds? I think they were not. I am at present of opinion that these bonds will be entitled upon the distribution of the proceeds of sale of the land grant, after the twenty-five hundred bonds, to be paid the proceeds of the sale of the portion of bonds for building the road from Portage City to Tomah. But this will be more maturely considered when the decree comes to be made.

There are no objections to a full allowance on nineteen hundred and ninety-one bonds of the first issue. They were disposed of by the company at eighty cents and less. The pleadings do not object to an allowance at par, or require the judgment of the court upon the question. Five hundred and nine bonds, the remainder of the twenty-five hundred, were in the hands of Mr. Clark, the president, and not disposed of, until the injunction was removed on the 28th of January, 1858. From the proof in this case it would not be conscientious to allow those five hundred and nine bonds to be paid in full. There is no account of what became of them, or what were they sold for. I think there is evidence sufficient to justify the court in reducing the amounts to be allowed on these bonds and on the second issue, in justice to the creditors.

I need not repeat here what is said in the opinion just delivered as to the rights of holders of bonds of this description. The company was notoriously bankrupt, and its assignment by way of lease of its road and rolling stock to a preferred creditor for an unlimited time, created an excitement in the city of New York, the market for the bonds, and the total loss of 477 credit of the company, and of confidence in the integrity of the directors, until an injunction was procured in the same city to restrain the further issuing of bonds; and that those bonds were not issued until the injunction was removed, and then only with certificates for surplus proceeds of sales of the lands, and for stock of equal nominal amount with each bond annexed, are sufficient facts to authorize the court to conclude that purchasers of the bonds cannot be bona fide holders for a valuable consideration. The bonds were offered in market, and disposed of, and purchased as depressed securities. They were sold and were bought as such, no doubt by speculators, knowing the unusal and desperate circumstances under which they were brought forth.

By allowing forty per cent. on the five hundred and nine bonds, and the same amount on the one million five hundred thousand dollars of bonds, I think full justice will be done the parties. A small portion, if any, of the bonds were sold after the 28th of January, 1858, for a greater price, with the certificates annexed, which were considered of some value. The average price was thirty-five cents. By allowing forty per cent. the purchasers cannot lose, and the company did not receive that much.

In regard to the amount to be allowed on the bonds in the Helfenstein mortgage, which was made on the same day as the lease to Chamberlain, it seems that the court is not called upon to adjudicate. That subject has not been specially presented, and it probably was intended to be left for disposition at the distribution of the proceeds of sale. It is not at all probable that they are entitled to more favorable consideration than the bonds above disposed of. As the several tracts of lands described in the mortgage, and not connected with the land grant or the railroad track, are the primary

fund for the payment of those bonds, and the only fund if the sale of the road
should be necessary after the sale of the land grant, to satisfy the
478 land grant mortgage, it may be immaterial at what rate they are estimated.

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their roads and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land grant bonds, and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors. And I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it
is not probable that the corporation could divide its franchises by
479 making mortgages of several parcels of the road and property. That
would be creating several corporations by deed of a company to which the legislature granted but one.

Judgments that may be recognized by the court as liens will be entitled to a share of the proceeds of the sales, according to their relative priorities with mortgages.

So far as I have progressed with these cases, a steady and single effort has been made to do equal justice to all the parties as nearly as their extraordinary character and implications would allow. Avoiding technicalities as much as possible, I have endeavored to take such a view of the whole matter as to approximate as nearly as possible to equal justice to all concerned.

480 EXHIBIT No. 29.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, Sebre Howard, the Milwaukee and Minnesota Railroad Company, and others.
} In equity.

MILLER, Judge.

This bill is to foreclose upon a mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company to complainants in trust, for the holders of the bonds mentioned in it. The deed was executed on the 17th day of

August, and the bonds are dated September 1st, 1857. The bonds are sealed with the seal of the corporation, signed by the president and secretary, and countersigned by complainants as trustees, and are for one thousand dollars each, to the amount of one million, payable on the 1st day of September, 1870, with interest at the rate of eight per cent. per annum, with coupons annexed, payable semi-annually, at the Bank of the Republic, in the city of New York. The bonds are payable to the bearer thereof, and recite that they are for money borrowed by the company for the construction of their roads.

The deed conveys in trust as security all and singular the railroad of the company from the city of Milwaukee to Portage City, a distance of ninety-five miles, constructed and in full operation, and also the railroad of the company (as well that part which has been constructed, as that part which remains to be constructed) from Watertown, by way of Columbus, to Midland, where it connects with the main line of the company's road, a distance of forty miles. And it includes all the road-beds, rights of way, improvements, and appurtenances, and all the property, real and personal, of the company to be acquired thereafter as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of the company, in respect to said railroads from Milwaukee to Portage City, and from Watertown to Midland, as fully as the same might be conveyed if said railroads had already been fully constructed and equipped. It is recited that the road from Milwaukee to Portage City is subject to a first mortgage on the same of nine hundred and fifty thousand dollars. That the first eighteen miles of said road is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles is subject to a second mortgage of two hundred thousand dollars. These two last-named mortgages are to indemnify the city of Milwaukee for advancing her bonds in aid of the company.

481 The charter of the company empowers them to borrow any sums of money from any persons or corporations, at any rate of interest which may be agreed upon, without regard to the laws on the subject of usury; and to make and deliver all necessary writings, notes, bonds, mortgages, or other papers, and securities of such amount and kind as may be deemed expedient by the corporation in consideration of loans. And by an act approved March 14, 1856, the company is authorized and empowered in its corporate capacity to make and deliver its bonds or obligations, and the directors are authorized to prescribe by resolution the sum for which each of said bonds shall be issued, the time and place of payment of the principal and interest, the person or trustee to whom they shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest such bonds shall bear, and the manner and form in which the coupons annexed to them shall be executed. And to secure the payment of such bonds the company is authorized and empowered in its corporate capacity to make and deliver a mortgage and deed of trust upon the whole or any part of its railroad constructed or authorized to be constructed, and of all or any of their estate, real, personal, or mixed, in possession or expectancy. And the company is authorized and empowered by its agents, or brokers, or otherwise, either in or out of this State, to sell, loan, pledge, hypothecate, or otherwise dispose of, any or all of said bonds authorized to be issued at par, or at any price less than par, and for such sum or sums and on such terms as to the said company or its agents or brokers shall appear most for the interest of the company.

And by an act approved October 10, 1856, any railroad company may borrow such sum or sums of money at such rate of interest and upon such terms as the directors may authorize, and mortgage its property and franchises and its road constructed or in process of construction.

The resolution of the board adopted August 8, 1857, authorized the issuing of bonds to the amount of one million dollars, for the purpose of carrying forward the legitimate work of the company. All of said bonds shall be expressed to be for money borrowed for the construction of their roads, and shall be payable to the bearer thereof; said bonds shall be convertible into the capital stock of the company, estimating both the stock and bonds at par, at any time within five years from the date thereof. And by another resolution of the board, the president is authorized to sell and dispose of all or any portion of the bonds, and to sell them or any of them at the rate of eighty per cent. of their amount, payable half in cash and half in stock of the company at par, or upon such other terms as he may deem proper.

A notice signed by the president of the company, dated at their office in the city of New York, August 10, 1857, and published in that city, represented that "the importance of completing the road this season to the junction of the western division, sixty-one miles from Portage City, by which we could not only control the coming winter's travel of the Upper Mississippi, but receive 300,000 acres of our land grant, has decided the board of directors to place before the stock and bond holders extraordinary inducements to furnish the means necessary to accomplish the object. The sum required to meet the engagements of the company and finish the road sixty-one miles beyond Portage is $400,000.

"To obtain this sum the company now offers to the holders of its stock and unsecured bonds, now so much depreciated in market, a new issue of one million of eight per cent. bonds, payable in 1870, secured by a deed of trust to Greene C. Bronson and James T. Soutter upon the eastern division of its road from Milwaukee to Portage City, (subject to the prior liens mentioned in the deed,) and upon the line of the road from Watertown to Midland, forty miles, which is subject to no prior lien.

"It was intended to issue this new loan exclusively to stockholders, receiving in payment four hundred dollars in stock of the company and four hundred dollars in cash for a bond of one thousand dollars; but it has been concluded to extend a like privilege to holders of *unsecured bonds* of the company which are outstanding, receiving such bonds with unpaid coupons upon the same terms as the stock.

"The subscription will be paid, one fourth of the cash payment at the time of making the subscription, the remainder with the stock or old bonds to be surrendered either at the time of subscribing or on the first day of September, when the new bonds will bear date and be ready for delivery.

"N. B.—To meet the views of those who have stock and would prefer to pay in bonds, it is understood that parties in this city will exchange bonds for stock."

From this circular and the testimony of Mr. Kilbourn, the president, it appears the object of making the issue of this million of dollars in bonds was to raise four hundred thousand dollars in cash; and he testifies that it was supposed this sum would be sufficient, when added to the other resources of the company, to secure the extension of the road to La Crosse. It was pro-
posed to offer the bonds to the stockholders at 80 per cent., payable
482 half in cash and half in the stock or unsecured bonds of the company.
By which means it was supposed 40 per cent. in cash would be
realized, making the gross sum of $400,000.

The bill charges that on or about the 26th day of September, 1857, the La Crosse and Milwaukee Railroad Company made a lease to Selah Chamberlain, and gave him exclusive possession of the road and property. At that time the company was entirely and hopelessly bankrupt. It is also charged that Chamberlain did not pay the accruing interest on these bonds, which, according to his lease, he was bound to do. It is also claimed that the rolling stock was embraced in the deed or mortgage.

The defendants named, in addition to the La Crosse and Milwaukee Railroad Company, are proceeded against as subsequent incumbrancers, or purchasers, or otherwise.

Sebre Howard, one of these defendants, answers the bill, setting forth that on a note dated July 1, 1857, he obtained a judgment in the circuit court of Milwaukee County against the La Crosse and Milwaukee Railroad Company, on the first day of May, 1858, which was sued in this court and a judgment rendered in October, 1859. These facts appear on the record of the judgment, and are conceded by stipulation filed. This answer states that at the time of issuing the bonds set forth in this bill the company was wholly insolvent, and that the deed and bonds were contrived and executed by the company, when the company was well known to its board of directors to be greatly embarrassed in its pecuniary affairs, for the corrupt and fraudulent purpose of disposing of the bonds, or a portion of them, in payment of pretended debts to the officers and agents of the company, or their friends, without consideration, or in exchange for stock of the company, then of little or no value, held by its officers and agents or their friends, and that in point of fact a large portion of said bonds were so disposed of and given away in violation of the charter, in fraud of its creditors, and of the defendant in particular. That two hundred of said bonds, being numbered from 651 to 825, inclusive, and from 851 to 875, inclusive were delivered or given to Selah Chamberlain in pretended payment or satisfaction of a claim for services rendered the company, or for damages sustained by reason of the breaking up or surrender of the contract, which claim was wholly fictitious and was greatly overestimated for the purpose of enabling him to receive the bonds. And the defendant insists that those bonds should be surrendered and cancelled.

That one hundred of the bonds were given to Seth R. Foster as a security for a pretended indebtedness of the company, when the company was not indebted to him, and that these bonds were given to him without consideration and fraudulently.

That about fifty-five of the bonds were delivered to the complainant, James T. Soutter, either without any consideration or as collateral to or in exchange for bonds of the company theretofore issued corruptly and fraudulently, and without authority, by said company, known as "corruption bonds" or "Barstow bonds," and that Soutter gave no valuable consideration therefor. That the transfer of said bonds to him was fraudulent, and that they should be delivered up and cancelled.

That fifteen of said bonds were delivered to Greene C. Bronson, the complainant, in exchange for stock of the company, which was nearly or altogether worthless, and that the company had no right to purchase from said Bronson said stock and pay for it with its money or bonds, and that the sale of said fifteen bonds was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled.

That about 600 of the bonds were disposed of at the nominal price of eighty cents on the dollar, one half in money and the other half in depreciated bonds or in the stock of the company, and that the company received for said 600 bonds only about one hundred and ninety thousand dollars in cash. That the company had no authority to dispose of those bonds upon these conditions, and that they should be surrendered and cancelled as fraudulent and void.

The defendant admits that the company, on the 27th Sept., 1857, made to Chamberlain the lease mentioned in the bill, and placed him in possession of the road and property, and by said lease he was to pay the interest on these bonds. That at the time the company was hopelessly insolvent as stated in the bill. That the company had no lawful right to make said lease, it was void in law, and was fraudulent and void as against the creditors of the company, being given and accepted for the purpose of carrying on the business of the company, and to hinder and delay the creditors.

And on the second day of October, 1857, the company confessed a judgment to Chamberlain in this court for $629,089 72 for the same purposes, design, and objects of the lease, and to support the lease; and the said judgment is fraudulent and void.

This defendant states that Chamberlain has received the proceeds of the road under said lease, and has neglected to pay the interest accrued on these bonds. And that he has contrived with Prentiss Dow, the agent of the complainants, to make the non-payment of the interest the ground
483 for this action.

Sebre Howard being a creditor of the company at the date of the bonds and deed in suit, with a judgment against the company in the circuit court, he is entitled to make defense to this bill. For this reason it is not necessary to refer to the answer of Graham & Scott, as judgment creditors, which is a mere repetition of Howard's answer.

Upon the petitions of John S. Rockwell and A. Fleming they were severally permitted to file answers in the name of the Milwaukee and Minnesota Railroad Company, defendant. It is proper for the court to make use of the testimony taken at the instance of Fleming in support of the answer filed by him, so far as the same sustains the answer of Sebre Howard; but it is to be understood that the court is not willing, by any act, to convey the impression that the mortgage to Barnes, and the sale upon it, and the organization under such sale in the name of said company, are not to be considered open to judicial inquiry on the part of the creditors and stockholders of the La Crosse and Milwaukee Railroad Company.

It is contended on the part of the complainants that the judgments of Howard and of Graham & Scott were cut off by the sale under the third mortgage to Barnes. And it is also alleged that that mortgage and sale and the organization of the Milwaukee and Minnesota Railroad Company were not so fraudulent as not to entitle the company to the consideration of the court. It does not belong to the complainants to raise the objection to the answers of those judgment creditors. The Milwaukee and Minnesota Railway Company may recognize Howard and Graham & Scott as lien creditors, and they may not recognize the sale under the Barnes mortgage as extinguishing their liens. And the court cannot deny to that company the right to respond to the bill as a defendant of record, although very strong suspicions may exist against it. Being made a party defendant in the bill as a subsequent incumbrancer or purchaser, it is entitled to appear, but the mortgage under which the organization was made being subject to the mortgage in this bill, it is not entitled to the same consideration as lien creditors. The organization of the Milwaukee and Minnesota Railroad Company is probably more nominal than real.

The La Crosse and Milwaukee Railroad Company make no defense. The lien creditors, made defendants in their own and others' behalf, answer the bill and make defense. This is a contest between bondholders, who claim the contents of their bonds to the full amount, and other creditors, equally meritorious, who invoke the equitable interposition of the court.

The terms of subscription for the bonds, contained in the circular of the president, conveyed the idea of the company's insolvency, and also represented that the recital in the bonds that they were issued for money to carry on the work was not the whole truth. The proposition to sell the bonds at eighty per cent., one half in money and the other half at par in stock and unsecured bonds greatly depreciated, of the company then insolvent, was notice to purchasers that the company, in the desperation of its circumstances, was taking an undue advantage of the stockholders and general creditors who had no notice of the proposition. The bonds were thus offered and disposed of in the months of September, October, November, and December, 1857, at the time of great pecuniary revulsion and panic, and when excitement was occasioned in New York by the company having made an assignment by way of a lease of the road and confessed a very large judgment to Chamberlain. Under these circumstances a general scramble for the bonds ensued, on the part of all who had an opportunity as trustee, agents, or brokers, of the company, until its credit became entirely prostrate and its object in issuing the bonds was frustrated.

The proof substantially sustains the answers, and fully establishes the fact that the bonds were disposed of as depreciated securities for an amount not exceeding two hundred thousand dollars in cash.

It is contended on the part of complainants that the bonds being payable to bearer are negotiable, and that no defense can be made to them The object of the company in issuing them in that manner, with coupons annexed, was that they might be more available, and might command a better price in market. They are negotiable instruments so far as they are made to pass by delivery and give a good title to any person honestly acquiring them, and thereby enable the holders to sue in their own names. But being under seal, the bonds, if endorsed, would not entitle the holder to charge the endorser by demand and notice, or protest as promissory notes or bills of exchange. They are not strictly negotiable instruments under the law merchant; but as sanctioned by trade, and in this instance as authorized by law, they pass from hand to hand, vesting a legal title in the holder. But whether corporation bonds purporting to be issued in aid of improvements, or of the object of the corporation, are of such a character as to cut off all defense as against bona fide holders, because they are payable to bearer, is not necessary to be decided in this case.

The bonds were disposed of and accepted in prejudice of stock-
484 holders of the company. The notorious character of the company,
particularly at the times the bonds were being disposed of, the public notoriety of the assignment and judgment and possession of Chamberlain, and the excitement caused by these transactions, and Mr. Chamberlain's possession and control of the road until the filing of this bill, are sufficient to force upon the mind the conclusion that every person dealing in the bonds must have had notice of these facts as the reason why there being disposed of as depressed securities. Under these circumstances none but desperate speculators would purchase them at reduced rates; and such purchasers should not be considered bona fide holders without notice. The bonds being in the nature of public securities, purchasers would naturally inquire into the manner and the consideration of their issue. The act empowering the company to dispose of bonds at almost any price did not authorize a distribution of them among agents, trustees, and favorites, in fraud of stockholders and creditors. These complainants representing the bondholders have not treated this deed as a deed of trust by taking possession under it; but by filing this bill they have submitted it to the court as a mortgage for the amount equitably owing to the bondholders and payable according to the conditions of the bonds. They have come into a court of chancery, praying a decree of sale of the mortgaged premises according to the principles of equity under the laws of this State. Upon these considerations the bondholders will be entitled to a decree for such amount as they are equitably entitled to recover according to the conditions of the bonds. The court will not make a new contract between them and the company, but will give them such amount as equity entitles them to recover. This case is different from that of the Canal Company *vs.* Vallette, 21 Howard,

414. That was a bill by Vallette to compel the company to deliver to him one hundred and twenty five bonds, of one thousand dollars each, according to a contract for finishing the canal, although the work might have been done for a less amount for cash.

It would be tedious to review the evidence of the considerations paid or given for the bonds. Stephen H. Alden, an agent of the company, had the disposal of the first one hundred of the bonds, for which he arranged with the company to pay at the rate of fifty cents on the dollar. Selah Chamberlain, a preferred creditor of the company, received two hundred of the bonds, which he credited on an allowance of the company for damages outside of his judgment at the same rate. None of the other bonds were procured at rates more beneficial to the company.

The condition of the company continued growing more unfavorable to the sale of its bonds, and there is no proof that the market price of these bonds improved. Nor did any person appear to make proof of having really and substantially paid more than fifty cents on the dollar. And in addition, there was paid on each bond before the filing of this bill, three coupons, amounting in the aggregate to one hundred and twenty dollars. The masters reported the real amount of the bonds to be five hundred thousand dollars, or fifty cents on the dollar of their nominal sum. This is as much as the holders of the bonds are in equity entitled to, with interest on this sum from September, 1859, and is in compliance with the opinion of the court.

The exception of complainants that the whole amount of one million dollars, with interest thereon, should be allowed is overruled.

Henry Valette appeared after the masters' report was filed, and by consent of counsel filed an answer claiming more than fifty cents on the dollar on forty-two of the bonds held by him It does not appear that he at the time of his purchase of the bonds actually invested over that sum. And even if he had given more for them the court at this late day will not disturb the report. The bondholders are the real parties in interest, and proof of their claims should have been made by them either in court before the hearing or before the masters. The answer and the exception to the report filed by this person will be overruled.

The rejection by the masters of the account of Mr. Dow as agent of complainants of $13,386 14 for his expenses in attending to this suit is the subject of an exception. One item is for salary from Nov. 1st, 1859, to June 1st, 1861, at the rate of $5,000 per annum. Several items are for his traveling expenses to and from New York. These items are claimed under the provision in the deed that the company shall pay all costs, charges, and expenses. By the agreement made between the trustees by Mr. Dow, their agent, and Mr. Chamberlain on the 30th November, 1859, the suit for foreclosure on this mortgage was to be conducted amicably between them. And the bill was filed on the 9th December following, when by the report of the masters of the accounts of Dow as agent and of Chamberlain, there does not appear to have been a pressing necessity for it. The court cannot consent that the bondholders, who are the real parties in interest, or the other creditors shall be taxed with this bill. There is no satisfactory proof of the necessity or propriety of the charges binding on the company. The masters
were right in rejecting it. The item of $2,500 for fees to the attor-
485 neys who filed this bill and conducted the suit will be paid by an
order on the receiver as part of the costs with such other items as are taxable.

The supplemental report of the masters corrects the matter of the seventh and eighth exceptions.

The several exceptions of complainant to the report in regard to the amount of principal and interest on the bonds are overruled.

The masters reported the correct amount of interest upon the sum found to be equitably recoverable upon the bonds.

The remaining exceptions of complainants in regard to that part of the report which relates to judgments will be overruled as not affecting the interests of the bondholders. All the judgments mentioned in the report being subsequent in date to the mortgage are merely entitled to surplus.

At the time of making the order of reference I remarked in relation to the claim of Selah Chamberlain: "The claim made under the lease as a lien, authorizes the order of reference in the manner proposed. And after stating the account in the manner here intimated by exceptions the question can be raised whether the lease constitutes a lien or whether the possession of Chamberlain under it was that of a mere lessee. And the question may also be raised by exceptions to the report whether the other lien creditors can require the payments and set-off to be applied to the ascertained liens of record. And before making the decree it will have to be ascertained whether the judgment of Chamberlain is a subsisting lien, or whether the court can look into the decree in the Cleveland case vacating it; for if this matter is not settled before the decree, there is not anything to prevent creditors from disputing the judgment at the distribution of the proceeds of sale. And if it is a lien, then its relative position will have to be ascertained, together with the effect of the appeal in the Cleveland case, and also of the agreement of Chamberlain postponing the lien in favor of the second issue of the land grant bonds. It may be, if the amount proper to be included in the judgment should be fairly investigated and ascertained upon this reference, that creditors might not be disposed to object to it as a subsisting lien for the amount so found."

Under the impression that Mr. Chamberlain was a creditor of the company, and being anxious that the amount of his liens as claimed in his answer should be ascertained before the decree, as they were embarrassing to the court and to the parties, and in hopes that the masters' report might be satisfactory to the parties, the order required the master to "report the amount of the several specific claims of Selah Chamberlain, and also the amount of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and that they examine the said Chamberlain under oath, and require him to produce his books, and that they may also take additional testimony to that on file." Instructions not of record were given to the masters of the manner of stating the account.

The masters reported due Chamberlain on the judgment $418,616 70. To the report he filed exceptions claiming a large sum more than the amount reported; and Sebre Howard, Graham & Scott, and the Milwaukee and Minnesota Railroad Company filed exceptions striking at the validity of the whole amount reported. At the hearing the court was met with the objection from both sides that the validity and the amount of Chamberlain's lien could not be settled by the court upon the pleadings. The answers of these defendants charge that the lease and judgment of the La Crosse and Milwaukee Railroad Company to Chamberlain were given with the intent to hinder and delay creditors, and were fraudulent and void, but there is no prayer that they be vacated. The allegations in the answers are in relation to the circumstances under which the bonds were issued by the company. The answer of Mr. Chamberlain sets up his claims against the La Crosse and Milwaukee Railroad Company as liens to be allowed in the decree of sale. The answers of the other defendants merely allege those claims not to be liens and to be void for fraud. In these pleadings there is no issue between these defendants and Chamberlain, also a defendant. There was no impropriety in these several defendants appearing before the masters in support of their

answers, and to show how the bonds were disposed of, and the consideration for those taken by Mr. Chamberlain. No doubt the masters endeavored to ascertain and report on the claims of Mr. Chamberlain with due regard to their merits. But being met now with the objection from both sides that there must be a cross-bill the court will defer the consideration of the exceptions in relation to Chamberlain's claims with leave to the defendants contesting them to file a cross-bill against him before the first Monday of February next, and if it is not filed by that time the objection will be considered as waived. This proceeding favors the due administration of justice, as the parties can then be heard upon appropriate pleadings and specific allegations, upon which a decree can be made admitting of an appeal. There will be no delay with the decrees in this or in the land grant case, as
486 the dispute between these parties is in relation to the distribution of surplus of proceeds of sales, if any. The mortgage in this case and the land grant mortgage are both prior and paramount to Mr. Chamberlain's lease and judgment.

A decree will be made for the sale of the mortgaged premises, provided the interest reported by the masters be not paid before the day of sale.

The Milwaukee, Watertown, and Baraboo Valley Railroad Company, defendant, by its attorney filed an answer setting forth that "it became the purchaser for a valuable consideration from the La Crosse and Milwaukee Railroad Company, in the month of December, 1857. That it is under no covenants or obligations to pay any part or portion of the debt to the complainants in trust. And that all the western division of the La Crosse and Milwaukee Railroad, including that part of the road described in the trust deed, became the property of this defendant in virtue of such purchase. And it prays that the decree of this court may direct that the portion of said mortgaged premises so purchased, and in the possession of this defendant, may be excluded and exempted from sale to satisfy said decree, until after all other parts or parcels of the mortgaged premises, or such parts thereof as may be necessary to satisfy such decree, be sold.

It appears that by a release of the La Crosse and Milwaukee Railroad Company, dated December 20, 1858, to this company, defendant, all liens and interests were released, (except those mentioned,) which included the sum of $283,000, part of the mortgage in suit, which, by the deed from the La Crosse company of the 24th December, 1857, were to be paid, and to be considered a lien on the forty-two miles to Midland.

That part of the mortgaged premises will not be sold, unless required to pay this and previous liens after the sale of the road from Milwaukee to Portage City.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. A. Helfenstein, trustee, and others.
} In equity.

MILLER, Judge.

An act of Congress, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, granted to this State for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line every alternate section of land designated by odd numbers, for six sections in width on each side of said roads, respectively. And it is provided that the lands shall be exclusively applied in the construction of the road for which they were granted and selected, and shall be disposed of only as the work progresses, and they shall be applied to no other purpose whatsoever. And that the lands granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other. And the act further directs that the lands shall be disposed of by said State only in this manner. That a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold. And when the governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so on; from time to time, until said roads are completed.

By an act of the State legislature, approved October 11, 1856, the lands granted to the State, on the route to the west end of Lake Superior and to Bayfield, from Madison and Columbus, were granted to the La Crosse and Milwaukee Railroad Company, upon the conditions mentioned. It is directed by this act that the roads from Madison and Columbus to Portage City shall be constructed and completed by December, 1858.

And it is provided that the lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatsoever.

The act then provides that the title shall vest in the company in the same manner as by the act of Congress it shall vest in the State, and makes it the duty of the governor to give the certificates to the Secretary of the Interior, and to execute to the company a deed for the lands as it may become entitled to them. And it is provided that the company shall not sell any of the lands until twenty miles are completed, so as to admit of running regular trains over the same; and so on, from time to time, so that the sales of lands by the company shall never exceed six sections of land for every mile of road so completed. For the grant the company is to pay into the State treasury four per cent. of the gross earnings. The company is authorized to mortgage, or pledge, or otherwise dispose of, all their right, title,
487 claim, or demand of, in, or to any lands, or interest in lands, granted the company by the act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

On the 11th of December, 1856, the board of directors of the company adopted resolutions to make a trust deed to the complainants, and to issue bonds to the amount of ten million dollars. On the 31st of the same month the company made its trust deed in the nature of a mortgage, in pursuance of those resolutions, whereby it did grant, bargain, sell, and convey to these complainants all and singular the several tracts, pieces, or parcels of land which are or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, depots, and all other lands constituting the roads of the company from Madison, by way of Portage City, to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and all the superstructure on said road, and all the locomotive engines or other rolling stock, and all equipments which have been or may be procured for or used on said roads, or either of them, and all tools, &c., and other personal property which have been or may hereafter be procured, and all the rights, liberties, privileges, and franchises of said company of every kind and description relating to said roads. And also all the lands granted to the company under or by virtue of the act of Congress and the act of the State legislature, so far as the lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix River or Lake, estimated at one million of acres. The deed is intended to convey all present and future interest in the road and property and the lands.

Bonds were made of one thousand dollars each, on different days from the 1st of January to the 14th of July, 1857, to the number of twenty-five hundred, amounting to two and one half million dollars. They were under seal, and payable to bearer in the city of New York on the 1st day of February, 1877, with interest, payable semi-annually, at the rate of seven per cent. per annum, and coupons annexed.

January 28th, 1858, the company by its new board of directors, of which Stephen Clark was president, made an indenture or agreement with these complainants as trustees, in which, after reciting the former mortgage or trust deed, and its contents, and reciting that twenty-five hundred bonds, amounting to two and one half millions of dollars, had been issued, and for the most part negotiated, and the company being engaged in the construction and completion of that portion of the road between Portage City and La Crosse, with the necessary depots, stations, &c., and appurtenances, it will not be necessary to issue bonds under said deed or trust mortgage to an amount exceeding in the whole more than four millions of dollars, including those already issued. In consideration of the premises, and for one dollar to the said company in hand paid, and in order to secure the bonds issued and to be issued within the amount of four millions of dollars, and to induce the future taking of said bonds, as well those issued as those to be issued, the company covenants, grants, and agrees with these complainants by name, as trustees, that no more than four millions of bonds shall be issued. Similar provisions are then covenanted for as contained in the mortgage of December, 1856, relating to taking possession, and proceedings in case of default of payment, as well on the bonds issued as those to be issued. And the company further covenants that the lands owned by the company in La Crosse shall be appurtenant to the road. And also the lands granted so far as they pertain to the construction of that part of the road from Portage City westward to the junction at Tomah, being a distance of sixty-one miles from Portage City, embracing about three hundred and seven thousand two hundred acres, shall be by said trustees disposed of and applied, in the first instance, to the payment of whatever sums may be due or owing on the four millions according to the deed of trust, and the surplus shall be divided *pro rata* among the holders of such certificates as may be issued in connection with the bonds, allowing the holders of privileged stock, which has been issued in connection with such bonds, a proportion of the surplus. Then follows a form of such certificate.

The next day after the date of this agreement, January 29, 1858, there were issued four hundred bonds of one thousand dollars each, and one hundred bonds of five hundred dollars each, amounting to four hundred and fifty thousand dollars; February 12 there were issued three hundred bonds of one thousand dollars; February 15 there were issued one hundred and fifty bonds of one thousand dollars each, and February 16, two hundred bonds of one thousand dollars each, amounting in the aggregate to one million five hundred thousand dollars; and which, with the bonds issued, make four millions. They were under seal, and payable to bearer in the city of New York, the same as the first bonds, and of the same date.

J. Albert Helfenstein, who is a party defendant, answers that the
488 company, on the 26th day of September, 1857, did execute and deliver to him a mortgage or trust deed, as trustee, (reciting, for the purpose of constructing their road from Madison to Prescott, at the mouth

of the St. Croix River or Lake, on the Mississippi River, and putting it in order, the company agreed to borrow one million of dollars, and to issue its bonds therefor,) of all their lands which constituted, or might constitute or be a part of the roads from Madison, by way of Portage City, to Prescott, and from Portage City to La Crosse, and all the road, &c., whether then made or to be made, and all the appurtenances, and the locomotives and rolling stock, and that to be acquired, and all the franchises, and also several tracts of land in Pierce County, in this State. And also, on the 2d day of October, the company made its bonds under seal, payable to the bearer, on the first day of October, 1860, at the rate of eight per cent., in New York. And the bonds issued amounted to three hundred and sixty-eight thousand five hundred dollars. The last date of their issue was December 17, 1857.

He claims that in case of a decree of sale on the bill, the part of the premises not covered by this mortgage may be decreed to be first sold; and in case of sale of that portion of the premises covered by his mortgage, the proceeds of sale may be applied to it. And he claims a preference to the fifteen hundred bonds issued on and after January 29, 1858.

An amended answer of Mr. Helfenstein states that at the time the trust deed mentioned in the bill was made, no part of the line of the road from Madison, by way of Portage City, to the St. Croix River or Lake, and from Portage City to La Crosse, had been constructed, nor in existence, nor in process of construction, nor had the company acquired the right of way, nor did the company then own the land now occupied by the line of road, and on which so much of the road as extends from Portage City to La Crosse has since been constructed, and that the said deed is not a lien upon the said line of road.

And it is alleged that of the issue of bonds under the complainants' trust deed only nineteen hundred and ninety-one bonds, amounting to nineteen hundred and ninety-one thousand dollars, were actually issued and disposed of by the company prior to the execution and delivery of his deeds and bonds; and that the remainder of the four millions were issued and disposed of after.

Mr. Helfenstein's mortgage does not cover the land grant.

On the day of the date of that mortgage the company made a lease and assignment of their road from Milwaukee to La Crosse, and of rolling stock, to Selah Chamberlain, and put him in possession. And on the second day of October, 1857, the same date of the bonds issued under that mortgage, the company confessed a judgment in this court in favor of Chamberlain for over six hundred and twenty-nine thousand dollars.

The company, under the complainants' mortgage, made bonds to the number of twenty-five hundred, at several times, commencing in January, 1857, and running through the months of February, March, April, May, June, and to the 14th of July. And issued all but five hundred and nine before the 29th day of January, 1858. The same board that made the mortgage and those bonds made the lease and assignment and confessed the judgment to Chamberlain.

In the month of November, 1857, the board of directors was changed by electing a majority of the members residing east. On the 28th of January, 1858, the board made the agreement above recited, whereby bonds were to be issued under the mortgage to complainants to an amount not exceeding four millions of dollars, including those already issued. This was an increase of the amount then issued under the mortgage one million and a half dollars. The company ceased making and issuing bonds in the month of July, 1857, and in August made a second mortgage of one million dollars on the road to Portage City, and in the month of September made the mortgage to Helfenstein. From these facts it is probable that all intention of making and issuing more bonds under the mortgage in suit had been abandoned. It is not to be presumed that the company intended a fraud upon the holders of the Helfenstein mortgage bonds, by delaying the making and issuing of bonds under this mortgage, with the intention of resuming after the bonds under the Helfenstein mortgage were disposed of.

Under these circumstances I have considered the land grant mortgage in the nature of a mortgage to secure future advances; and that the Helfenstein mortgage should be allowed to intervene between the issue of twenty-five hundred bonds and the subsequent issue of fifteen hundred. But upon further consideration of the subject I am forced to a different conclusion. The high numbered bonds are of the same date and are in every respect the same as the low numbers, excepting the difference of the name of the president of the company and of the date of registry by the trustees. The mortgage or deed of trust was given to secure ten million dollars in bonds to be issued. Every purchaser of the low numbered bonds became in equity a co-mortgagee to the amount of ten millions. By the supplementary mortgage and agreement of January 28th, 1858, not more than four millions could be issued under the original deed, and the issue of the one million five hundred thousand dollars made up that amount. And by that
489 supplementary mortgage and agreement the one thousand five hundred bonds, or the high numbers, were portions of the bonds secured by the original deed. The dates of the registry of the bonds cannot give preferences, otherwise the bonds as issued would claim precedence, contrary to the object and intention of the deed. And it was known to the purchasers of bonds from the nature of the business of the company and the object of the deed, that the bonds were not all to be issued at one time. The bonds were in the nature of public securities to be issued as necessity required. They are all in the form as contained in the deed. The deed creates the lien, and the purchase of a bond establishes an interest in that lien, without regard to the number of the bond, the date of its registry, or the time of its purchase. All purchasers of bonds are to be considered of the same class of persons equally entitled to the security of the deed. And the purchasers of the high numbers were not bound to look after liens or mortgages of a date subsequent to the deed recited in the bonds. The certificates annexed to the high numbered bonds entitling holders of first mortgage land grant bonds to dividends of such surplus as may be realized by the trustees under the provisions of a certain deed of trust or mortgage of the company to these complainants, dated January 28, 1858, from the sales of the lands as provided for in the land grant mortgage, are notice of the additional or supplemental deed to purchasers of the bonds, but are not evidence that they did not become co-mortgagees in equity in the land grant mortgage to the extent of four million dollars. It appears in proof that there was no distinction in the market between the bonds; that they sold indiscriminately at the same price. The order of reference contained no discrimination in regard to priority of lien. The testimony, I think, fully justifies the report computing the equitable amount of the high numbers at forty cents on the dollar. The testimony discloses the fact that the directors of the company were restrained by an injunction founded upon allegations of fraudulent practices and of untrustworthiness on their part, issued from a court in the city of New York, enjoining them from issuing any more bonds under this mortgage. That five hundred and nine bonds remained on their hands, and that those bonds and the one thousand five hundred were not issued until the injunction by agreement of the parties in interest, on the 28th of January, 1858, was removed. It does not appear satisfactorily what disposition was made of the proceeds of the sale of the five hundred

and nine bonds by the directors. It does not appear that thay were honestly applied to the legitimate purposes of the company. But it does appear that certain directors speculated in the bonds covered by this mortgage, and sold these last issues of bonds at about forty cents on the dollar, while they had to account for them to Chamberlain at the rate of thirty cents. And these bonds had annexed to them certificates entitling the holders to an equal amount of surplus of sales of the lands. All these facts were notice to purchasers that the bonds were issued and disposed of as depressed securities. (Diamond *vs.* Lawrence County, 47 Pa. State Report, 353.) The market price of the bonds did not improve, Mr. Chamberlain continuing in the notorious possession under a lease and assignment of the road and appurtenances.

The testimony discloses such a series of corrupt and dishonest transactions on the part of the directors of the company, and of persons dealing in those bonds, that it is only for the protection of persons who may have purchased some of them at or about forty cents on the dollar that this amount is allowed. But for this consideration the bonds would only be allowed at thirty cents, the rate Mr. Chamberlain agreed to receive them, and for which they might be sold under the agreement of January 28th, 1858, for building the road from Tomah to La Crosse. The same cause exists for the same reduction on five hundred and nine of the first twenty-five hundred bonds. But there is no good reason for discrimination in regard to their lien under the deed, Mr. Chamberlain's agreement waiving priority of his lien in favor of the issue of the fifteen hundred bonds, was in furtherance of his own contract for building the road to La Crosse, and was merely declaratory of the legal rights of the purchasers of those bonds. And the Helfenstein mortgage was issued subject to the land grant mortgage of ten million dollars, modified Jan. 28, 1858, and reduced to four millions.

By the amended answer of Helfenstein, objection is made that the mortgage in suit is not a lien on the road, as work on the line of the road had not been commenced on the day of its date. I think some work had been commenced. By the act of the legislature granting the lands to this company authority is given the company to "mortgage all their claim, right, title, or demand of, in, or to any lands granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper." This statute authority disposes of the objection to the want of title, both as to the lands on which the road was located and made
and to the lands granted by governnent. The company could mort-
490 gage land and property to be acquired, and if acquired afterwards
the lien attached. And without the act I think there can be no doubt of the principle of equity, that where a mortgage was made of an estate to which the mortgagor had not at the time good title, yet having afterwards acquired one, it would enure to the benefit of the mortgagee. Courts of equity will support mortgages, fairly entered into, of things and estates which have no present existence, and the lien will adhere to the property when acquired by the mortgagor. Whatever interest the company has acquired, or has a right to acquire, in the road and property appurtenant thereto, and in the lands covered by the road, and also in the lands granted by government according to the conditions of the grant, is covered by complainants' mortgage.

It is contended that the fifteen hundred high numbered bonds, or their avails, being applied to the construction of the road from the junction at Tomah to La Crosse, and not on the line of the road designated in the grant, are no lien on the lands. It is true that the grant prohibited the application of any of the lands to any other purpose than building the road therein designated. And it is also true that the use of the avails of those bonds was a misapplication of that much of the grant. But upon the face of the bonds and the provisions of the deed purchasers of bonds were assured of a purpose of procuring the loan within the terms of the grant, and they were not obliged to look to the appropriation of the money. The bonds purport to be issued for money borrowed by the company for the construction of their road from Madison to St. Croix River or Lake, which is the route mentioned in the land grant.

In obedience to the order of reference, the masters enquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds in this mortgage. They also report that the rolling stock on the road cost $623,235 78, and that all but those box cars are covered by the first and second mortgages. The complainants except to this part of the report, and claim the whole rolling stock. They found their claim upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock, and that their mortgage was the first in date after the act of Oct. 10, 1856, declaring the rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance by bonds and mortgage for the purpose of building their roads, and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity, those pledges should be sustained, and the persons who purchased the company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock. This matter is fully settled as authority to this court in the case of Pennock *vs.* Coe, 23 Howard, 117. The rolling stock was procured by the company as owners, and was fitted and adapted to the road as the means of operating it; and so long as it is thus used it should be considered as fixtures, even without statute law. The first mortgage covered all the after acquired rolling stock, except such as should be proven to have been purchased with funds raised upon subsequent mortgages. To that extent those mortgages should have a superior equity. For these reasons the exception will be overruled. But the decree will, in addition to the forty cars reported by the masters, allow to this mortgage its share of all the rolling stock purchased and procured by the receiver, costing $147,942, in proportion to the net revenues.

Before the appointment of the receiver the revenues of the west end of the road did not more than cover operating expenses. Since then they have so increased as to entitle these bondholders to a proportion of the rolling stock procured by the receiver. It does not appear that any of the avails of the second mortgage bonds were applied to the purchase of rolling stock.

Complainants have urged the court to include in the decree an order to place purchasers in possession, and to authorize them to reorganize under the act concerning railroads, approved October 10, 1856. They contend that this deed is the fist deed of trust or mortgage under that act, which authorized

a mortgage of the franchise, and also empowered purchasers under it to reorganize. Section 4 of that act allows deeds of trust or mortgages theretofore executed to be included in the several provisions of the act, provided the railroad company shall first accept the provisions of the act by a resolution
of its board of directors, and shall cause a copy thereof, under the cer-
491 tificate of its secretary, with the corporate seal attached thereto, to
be filed in the office of the secretary of state.

It is understood that a corporation cannot absolve itself from the performance of its obligations to the public without legislative authority. Nor can it, without consent of the legislature or of the stockholders, dispose of its franchises. (Railroad Co. *vs.* Winans, 17 Howard, 20–39.) Nor can a creditor without such authority attach and sell any portion of the property of an incorporated company that is essential to the enjoyment of the franchise. (Guy *vs.* Tide Water Canal Co., 24 Howard, 257.) The first mortgage in terms includes the franchises, and covers the road from Milwaukee to Portage City; but whether the company at the date of that mortgage, by a legal construction of its charter and other acts, had authority to mortgage the franchises, or whether the act of the 10th of October, 1856, has been accepted by the company, have not become legitimate subjects of enquiry in this case. Upon this subject the holders of the bonds secured by the first and the other mortgages have not had their day in court, and they are entitled to be heard.

The first section of the act of October, 1856, provides that any railroad company may borrow money, and may execute one or more trust deeds or mortgages, or both, as occasion may require, on any railroad or railroads constructed or in process of construction, and may make such provisions in such deed or mortgage for pledging or transferring their railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, &c., in any manner whatever as security, as they shall think proper.

And in case of any sale of any railroad, or any part thereof, the parties acquiring title under such sale and their associates shall exercise and enjoy thereafter all the same rights, privileges, grants, franchises, immunities, and advantages, in and by such deed enumerated and conveyed, which belonged to the company, so far as the same relate and appertain to that portion of said road described in the deed, and no further. And the purchasers are authorized to reorganize the company. This act vests the franchises in the purchasers, and authorizes them to enjoy the same rights and immunities as were enjoyed by the company, or the creation of a new corporation without the aid or consent of the stockholders; but only to the extent of the deed. This act, I apprehend, does neither contemplate a second deed of trust of a road and franchises or of a portion of them, nor a mortgage of the equity of redemption of a road and franchise, or of a portion of them, as a basis of reorganization. And I presume an organization on such basis would be subordinate and subject to the consent and control of stockholders and prior creditors. Nor do I apprehend that the legislature, either in word or intention, authorized the formation or continuance of more than one corporation. If this view of the matter is correct, it will follow that the first lawful mortgage or deed of trust of the franchise will draw to it necessarily the whole franchise and power of the corporation, and that purchasers under other deeds or mortgages will be entitled to their share of the revenues, either as purchasers individually or in the character of a nominal corporation, in proportion to the actual amount of their purchase. But, however this may be, a decree will be made in both cases for the sale of the premises as described in the deeds; and this subject can be more maturely considered when purchasers apply for possession.

This deed empowered the trustees to make sales of the lands described therein in satisfaction of the bonds. Whether any such sales were made does not appear, but the presumption is that there were none. The lands were made the primary fund for the satisfaction of this debt. The amount of interest due on the first 1,991 bonds at par, according to the report of the masters, is $638,779 17. The amount of interest due on the remainder of the four million of dollars in bonds, allowed at 400 dollars on the 1,000 of principal, is $257,821 67. The interest now due on this mortgage is $896,600 84, and the principal falling due according to the bonds and deeds, is $2,794,000. The decree will order the lands to be first sold. If the bondholders under this deed purchase the lands in satisfaction of the interest, there will be no necessity of selling the road and property connected with it.

Upon the satisfaction or release of this interest, all the accruing interest upon the whole debt of the company could be annually paid out of the net revenues of the road, leaving a large surplus on account of principal. Since the court has had possession of the road six hundred and eighty-six thousand dollars of revenues had necessarily to be expended in putting the road in operating order, paying for right of way, for fencing, in the purchase of rolling stock, and in paying interest and liens. Hereafter a larger proportion of the revenues can be applied to the debts, and the road will annually become more valuable. If bondholders had from the commencement of this litigation come into court as honest creditors claiming debts equitably owing them, and not as speculators demanding more than they were entitled to, and scheming to obtain advantages over each other, some delay might have been avoided, and much trouble saved to the court in dispensing equity to all the creditors, and justice to the community.

492

Exhibit No. 30.

Deed to the city of Milwaukee, of July 13th, 1854, *securing the issue of city bonds*—$200,000.

La Crosse and Milwaukee Railroad Company to the city of Milwaukee.—Mortgage.

This indenture, made the thirteenth day of July, in the year one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Ferdinand Kuehn, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of the said city of Milwaukee, party of the second part.

Whereas the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads," approved April 2d, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the La Crosse and Milwaukee Railroad Company," passed June 2d, 1853, and approved by the legal voters of said city at an election held for that purpose, according to law, on the 23d day of June, 1853, is to issue and deliver to the said parties of the first part the negotiable corporate bonds of the said city of Milwaukee, in an amount or amounts not to exceed in all two hundred
493 thousand dollars, payable in twenty years from the date thereof,
with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principle payable at the office of Duncan, Sherman & Co., in the city of New York, as a loan by the said city to the said railroad company to aid in the construction of its railroad, under and in conformity with said act and ordinance above mentioned; and the said La Crosse and Milwaukee Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said

company as aforesaid, did, on the 16th day of February, 1854, execute to Alexander H. Johnson, treasurer of the said city, and his successors in office, for the use and benefit of said city, the bond of said company under the authority of its board of directors, signed by the president and countersigned by the secretary of said company, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the condition and covenants therein that said railroad company shall punctually pay and discharge the principal and interest monies of such bonds of said city as may be issued and delivered to said company, as a loan aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, costs, damages, and expenses which it may incur or sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company: Now, therefore, this indenture witnesseth, that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of said company above stated, and in consideration of one dollar, to them in hand paid at the sealing and delivery hereof, by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey, to the said party of the second part, and to his successors in office, for the use and benefit of said city of Milwaukee, all the following, present, and future to be acquired property of the said parties of the first part, that is to say: The first part of the railroad of the said parties of the first part, commencing at the point where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac and Green Bay Railroad Company, in the county of Washington, thence westward to the town of Beaver Dam, in the county of Dodge, being a distance of forty miles, including the right of way, land occupied or to be occupied by said railroad, together with
494 the superstructure and tracks thereon, and all rails and other materials used thereon, side tracks, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property within the limits aforesaid, rights thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents, and income to be had or levied therefrom, and all franchise, rights, and privileges of the said party of the first part of, in, to, or concerning the same, as well that hereafter to be acquired and constructed as that already acquired and constructed under their said act of incorporation, wherever the same may be within the limits aforesaid; but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repairs of the remaining part of said road, westward and northward, all stock, subscriptions, donations, and loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose; but the said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office, it being distinctly understood that the conveyance made by this indenture is only for so much of the present rights, interest, or property, or in the future to be acquired rights, interests, and property, of the said parties of the first part, as do or may exist on that part of said railroad extending from the said road in the county of Washington, where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, westward to the town of Beaver Dam, in the county of Dodge, a distance of forty miles. To have and to hold the said rights, property, premises, and every part

thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of the said city of Milwaukee forever. And the said parties of the first part hereby covenant to and with the said party of the second that the said parties of the *parties of the* first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free, and unincumbered; and that the said parties of the first part will forever warrant
and defend the same to the said party of the second part, and his suc-
495 cessors in office, for the use and benefit of said city, against all claims
whatsoever, except—and this conveyance is made by the said company, and received by the said party of the second part—subject only to a first and prior mortgage of the same rights, property, premises, and appurtenances above described, executed thereupon for a sum not exceeding ten thousand dollars for each and every mile of road embraced therein. This conveyance is intended as a mortgage to secure the punctual payment and discharge of the principal and interest moneys of the bonds of the said city of Milwaukee, to be issued and delivered as a loan to the said parties of the first part, in an amount not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the La Crosse and Milwaukee railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of the said parties of the first part, dated the sixteenth day of February, 1854, as aforesaid and above alluded to. And in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds of the said city of Milwaukee at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of the said company, then the said party of the second part, and his successors in office, may at once enter into and take possession of all or any part of the said premises and property, for the use and benefit of the said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto; and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all of said city bonds as remains unpaid, and of all liabilities of the said parties of the first part upon their said bonds; or the said party of the second part, and his successors in office, at his or their discretion, may lease the said premises or property, or so much thereof as shall be necessary to pay and discharge the principal and interest of the said city bonds, so much thereof as may then be due and unpaid as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, losses, and expenses incurred in consequence of the issue of its said bonds, to be sold at
public auction, in the city of Milwaukee, in the State of Wisconsin
496 aforesaid, or in the city of New York, giving at least forty days' no-
tice of the time, place, and terms of such sale, and of the specified property to be sold, by publishing the same in two newspapers of good circulation in each of the said cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof at such sale a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of the said first or prior mortgage, of all the right, interest, or claim in or to said premises and property or any part thereof; and the said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof

and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction nor stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid; and the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of the said city, for more fully carrying into effect the object hereof, particularly for the consequence of any rights or property subsequently to the date hereof acquired by the said parties of the first part and comprehended in the description hereinbefore contained. And the said parties of the first part hereby further covenant, for the consideration aforesaid, that the said city bonds so to be issued and delivered as a loan to the said parties of the first part as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said section *of* division of forty miles of said La Crosse and Milwaukee railroad, and embraced, or intended so to be, within this indenture. And the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in the performance of the covenants and 497 conditions therein contained, shall not authorize the sale of said mortgage premises and property for such default without public notice of such sale being given in the manner required by law, and for at least ninety days prior to such sale. And these presents are upon this express condition, that on the payment by the said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revert in the said parties of the first part without any acknowledgment of satisfaction, reconveyance, warranty, or other act.

In witness whereof, the said La Crosse and Milwaukee Railroad Company have caused their corporate seal to be hereunto affixed and these presents to be signed by their president and countersigned by their secretary, the day and year first above written.

[SEAL.]
STODDARD JUDD,
President of the La C. & M. R. R. Co.

Signed and sealed in presence of—
J. H. DAWES.
R. WHITEHEAD.

STATE OF WISCONSIN,
Milwaukee County, ss:

I, Robert Whitehead, notary public in and for said county of Milwaukee, do, by this instrument, given under my hand and official seal, certify that on this thirteenth day of July, 1854, before me personally appeared Stoddard Judd, who, being by me duly sworn, said that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the above instrument is the common and corporate seal of said company, and was affixed thereto by their authority, and that he, as president, subscribed his name thereto by the like authority, said Stoddard Judd being personally known to me to be the same person who executed said instrument.

[SEAL.] R. WHITEHEAD,
Notary Public, Milwaukee Co., Wisconsin.

498 EXHIBIT NO. 28.

Examination of Hans Crocker, receiver, continued.

Question. Since the 13th of June, 1863, have you been in actual possession, and have you in fact operated the eastern division and its rolling stock, actually receiving the revenues thereof, and disbursed the expenses of operating the same?

Answer. From the 13 June, 1863, to May, 1864, the St. Paul company was in possession of and operating the eastern division of the road under the order of the court; since then it has been in my possession.

Question. Have you since May 1st, 1864, actually operated the eastern division and its rolling stock, and have you in fact received the revenues arising therefrom and disbursed the expenses of operating the same?

Answer. Since the 1st May, 1864, I have operated the road; there is a part of the balance of the earnings in the hands of the St. Paul company not paid over.

Question. From and after the orders of the court of the 28th April, 1864, requiring the St. Paul company to deliver the possession of the eastern division to you, what change in fact was made as to the possession and operation of the eastern division?

Answer. The possession of the eastern division was surrendered
499 to me the same as I surrendered the road to them; it was surrendered
to me by Mr. Hughes or Mr. Goodrich, and I took it.

Question. I do not speak of theories or constructive possession and operation; I ask for the actual, tangible, visible fact. And do you say that since May 1, 1864, you have been operating the eastern division and its rolling stock?

Answer. I say yes.

Question. Have you been actually in the receipt of the revenues of the eastern division since May 1, 1864?

Answer. About the 1 May, when I took possession of the eastern division of the road, I found that under the order of the court and the claim of the St. Paul company that the rolling stock of the eastern division would not be sufficient to operate that division. It would have been necessary for me to open a new set of books and employ a new set of officers had I determined to run the eastern division independent of the western division; I therefore told Mr. Goodrich that I wanted him to operate the eastern division of the road for me, to retain the necessary officers, or to consider them in my employment jointly with the St. Paul road, and to keep the accounts as they
had been kept by the St. Paul company for the year previous, show-
500 ing the proportion of earnings applicable to each division. I con-
sider that arrangement the best arrangement for the eastern division. To have opened a new set of books would have required a large expenditure and would have taken a great deal of labor and time—at least one month—before they could have been got up.

Question. In making this arrangement was Mr. Goodrich then acting on behalf of the Milwaukee and St. Paul Railway Company, and was your arrangement really with the company through Mr. Goodrich as its agent?

Answer. Mr. Goodrich was at that time the general manager of the Milwaukee and St. Paul company. I made the arrangement with him as the manager of the road of the St. Paul company; but so far as he was to act with me it was made with him personally.

Question. Are the earnings of the eastern division since May 1, 1864, received by Mr. Goodrich as your personal representative, or are they received by the Milwaukee and St. Paul Railway Company?

Answer. They are received as they had been received before that time, by the St. Paul company or by their receiving officers.

Question. Is it true, then, that you are actually in the receipt of the revenues arising from the eastern division since May 1, 1864.

Answer. The revenues of the eastern division are all subject to my
501 orders, and have been since May 1, 1864.

Question. With whom have you kept your bank account as receiver since June 11, 1860?

Answer. With the Wisconsin Marine and Fire Insurance Company's Bank.

Question. Have you, as receiver, made deposits or kept a bank account elsewhere than at that bank?

Answer. From time to time I have had small deposits with the Merchants' Bank in this city—mostly arrising from collections made by the Merchants' Bank.

Question. By whom are the conductors, engineers, and other employees engaged in the actual operation of the eastern division since May 1, 1864, employed and paid?

Answer. They are the same men who were employed in the same capacity by the St. Paul company when I took possession of the road. Ever since I took possession of the road Mr. Goodrich has always employed these men; they are paid by the St. Paul road, and the proportion is charged to the eastern division.

Question. On and after April 28, 1864, was any change whatever made in the actual management of the eastern division except the method of keeping the account? If so, what?

Answer. The road was running just as it had been before; ac-
502 counts kept between the two divisions, earnings, and expenses, divided pro rata.

Question. Have you since June 13th, 1863, ever demanded of the St. Paul company the possession of the rolling stock that was on the road when you was appointed receiver and took possession, except the 40 box cars mentioned in the land grant decree? If so, when, where, and upon what officer or person of said company did you make such demand?

Answer. About the 29th or 30th of April, 1864, at the office of Cary & Pratt, in Milwaukee, I stated to Mr. Hughes, the president of the St. Paul company, the substance of the orders restoring the eastern division to me, and demanded possession of the road and of the rolling stock. I went into no particulars as to rolling stock; wanted to get all I could. He replied, you shall have possession of the road and all the rolling stock that the eastern division is entitled to.

Question. Have you ever made any other demand for any part of the rolling stock mentioned in the last question, except that mentioned by you in your last answer?

Answer. I have had frequent conversations with Mr. Hughes since that time, in all of which he has reiterated what he said before—that the rolling stock on the road at the time I took possession of the road, and a portion of the stock bought and built by me, belonged to the western division, the land grant road.

503 Question. How much, and what, rolling stock did the St. Paul company surrender to you upon this demand?

Answer. I cannot answer that without going into figures. I can ascertain and furnish it.

Question. Did they surrender to you any locomotives? If so, what is its number or description?

Answer. They surrendered to me, I think, about seven locomotives; but I cannot give the number.

Question. State how, in what manner, and in whose presence, this rolling stock was surrendered to you by the St. Paul company; how many locomotives, and how described by numbers or otherwise, and how many and what passenger and other cars, giving the numbers and description of each.

Answer. It was surrendered by Mr. Goodrich, in the office of the company; no one was present but Mr. Goodrich and myself. The rolling stock was not in view; it was on the road. Particular locomotives and cars were not specified. The statement hereto annexed, and marked Exhibit N N, shows the amount of interest in rolling stock then transferred to me.

Question. Was it not understood before you made this demand that the eastern division and rolling stock should remain in the possession of the St.
Paul company, and be operated as you have stated; and was not the
504 demand and the pretended surrender of possession to you merely
formal?

Answer. There was no such understanding at all, direct or indirect, or otherwise; and the arrangement was the best that could have been made for the eastern division.

Question. Did you accept what took place between you and Goodrich as a delivery of possession to you?

Answer. I did.

Question. What day did this take place?

Answer. I think it was the last day of April, 1864.

Question. On what day was the arrangement made between you and the St. Paul company that you have stated, in relation to their operating the eastern division?

Answer. I think it was on the same day.

Question. Is not the St. Paul company operating a road in competition with the eastern division from Milwaukee, by way of Columbus, to Portage City?

Answer. They are.

Question. Is not the pecuniary interest of that company, as the owner of a competing line of road, directly opposed to the interests of the eastern division?

Answer. I suppose it is.

Question Since the completion of that company's line of road are not the
agents and runners, both at Milwaukee and La Crosse, employed by
505 the St. Paul company, endeavoring to divert business from the east-
ern division?

Answer. I know nothing of that at all.

Question. Are there any runners or agents employed by you at Milwaukee or La Crosse to compete with the St. Paul company, as to business between Milwaukee and Portage?

Answer. I have none.

Question. Since the completion of that company's line, has not the through travel and freight ceased on the eastern division, so far as it is in the power of that company to produce that result?

Answer. The natural tendency of passengers and traffic would be to go on a through line either to Milwaukee or La Crosse, and such has been the result.

Question. What was the average earnings of the eastern division per day for ten days before and ten days after the St. Paul company commenced operating their competing line, as near as you can state from your knowledge or recollection ?

Answer. I will furnish such a statement.

Examination suspended.

SEPTEMBER 12TH, 1864.

Hans Crocker, receiver.—Direct examination resumed.

506 Question. Since the completion of their road by the St. Paul company do trains run through from Milwaukee to La Crosse, or from La Crosse to Milwaukee, as they did before that time over the eastern division ?

Answer. They do.

Question. Since the completion of their road by the St. Paul company, do not the trains that leave La Crosse for Milwaukee avoid the eastern division and come from Portage to Milwaukee over the St. Paul company's road, by the way of Watertown ?

Answer. The through trains run from La Crosse to Milwaukee, by the way of Watertown; but the passenger trains make the connections east and west at Portage.

Question. Is not the St. Paul company now using the rolling stock on the road when you were appointed receiver, except the 40 box cars on the Watertown branch or division of the road, in connection with the western division owned by the St. Paul company ?

Answer. Substantially, they are; but they furnish the eastern division of the road all the cars and engines necessary to do the business of the eastern division.

Question. Can passengers now leave Milwaukee for La Crosse over the eastern division, and go through without change of cars ?

507 Answer. They cannot.

EXHIBIT No. 31.

U. S. circuit court, State of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
LA CROSSE AND MILWAUKEE RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin :

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1864.

H. CROCKER, *Rec.*

Bal. cash on hand July 31, 1864	$68, 776 70
Receipts:	
Sundry accounts	55 00
	68, 831 70

Disbursements:

Loss and damage	$25 00
Incumbrances, east. div.	3,116 00
1st mortgage coupons	116 98
Milw. City do.	17 06
Bal. cash, Aug. 31, '64	65,556 66
	68,831 70

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of August, A. D. 1864, according to his best knowledge.

H. CROCKER.

Subscribed and sworn to before me this 20th day of August, 1864.

W. L. HINSDALE,
Notary Public, Mil. Co.

508 And afterwards, to wit, on the 27th day of September, A. D. 1864, the court made in this cause a decree, which is entered of record in said cause as of that day as follows, viz:

Circuit court of the United States, district of Wisconsin.

At a regular term of the circuit court of the United States for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in the district of Wisconsin, on the second Monday of September, 1864. Present: Hon. S. F. Miller, circuit judge, and Hon. A. G. Miller, district judge, on the twenty-seventh day of September, A. D. 1864.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Broadhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L, Simmonds, De Witt C. Freeman,
509 E. Bradford Greenleaf, Frederick Lind,
Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchel, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette.

This day this cause came on to be heard upon the bill taken as confessed

against the defendants the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Broadhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M.
Davis, for their having failed to plead, answer, or demur thereto, and
510 upon the bill and answers of the defendants Selah Chamberlain, Sebre
Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Edwin C. Litchfield, and Ephraim Mariner, and the replications thereto, and the pleading and proof, and upon the report of the masters herein filed, and on reading the mandate from the Supreme Court of the United States, and on reading the report of Jerome R. Brigham, special master, showing the amount of interest due to the complainant on the 1st day of March, A. D. 1864, to be the sum of four hundred thousand dollars, less the sum of thirty-four thousand seven hundred and ninety-five one hundredth dollars received by complainant, and that the said instalments of interest are for forty thousand dollars each, and that the same are due and payable on the first days of March and September in each year. And on motion of Thomas L.
Ogden, solicitor for complainant, it is ordered, and adjudged, and
511 decreed that the sum of four hundred and five thousand two hundred
and ninety-five one hundredth dollars ($405,290 05) interest was due and unpaid upon the bonds described in the bill of complaint in this action on the first day of September, A. D. 1864, and that the same now remains due and unpaid. And it is further ordered, adjudged, and decreed that unless the said sum of four hundred and forty thousand dollars be fully paid at or before the expiration of one year from the date of this decree, that the usual order will be made for the sale of the mortgaged premises described and set forth in the bill of complaint and in the mortgage.

And it is further ordered and adjudged that after the expiration of the said year the complainant shall be at liberty, when further instalments of interest shall be due and remain unpaid, or when the said principal sum shall become due and remain unpaid, to apply for an order for the sale of the said mortgaged premises, as directed by and in accordance with the mandate of the supreme court.

512 And it is further ordered, adjudged, and decreed that all moneys in the hands of the receiver, or other persons, applicable to the payment of the interest specified in this decree, be paid on this decree, so far as necessary to satisfy the amount now due or which may be due at the time of such payment.

And it is further ordered, adjudged, and decreed that any of the parties to this suit, whose rights are not herein and hereby expressly determined and adjudged upon, shall be at liberty to apply to the court at the foot of this decree, and for such other or further relief as they may be entitled to and consistent with the rules and practice of this court, and as may be agreeable to equity.

SAM. F. MILLER.
A. G. MILLER.

And afterwards, on the 29th day of September, 1864, came the parties by their counsel, and by consent it is ordered by the court that the receiver pay to H. L. Palmer, esq., the auditor in this cause, the sum of one thousand dollars to be applied on his services rendered and to be rendered as such auditor.

513 And afterwards, on the same day, came the parties by their counsel, and on consideration of the petition of the United States Trust Company for payment of arrears of sinking fund, it is ordered by the court that said petition be, and the same is hereby, overruled.

And afterwards, on the same day, to wit: the 29th day of September, 1864, came the parties by their counsel, and on consideration of the motion of the Milwaukee and Minnesota Railroad Company, made and filed on the 27th instant, that the receiver pay into court all monies in his hands in this cause, it is ordered by the court that said motion be, and the same is hereby, overruled.

And afterwards, on the same day, to wit, the 29th day of September, 1864, came the parties by their counsel, and on consideration of the petition of the defendant the Milwaukee and Minnesota Railroad Company, to discharge the receiver in this cause, and for other relief, filed September 27, 1864, it is ordered by the court that the same be, and is hereby, continued.

And it is further ordered that the said receiver file his answer to said petition by the first day of December next.

514 And afterwards, on the 29th day of September, A. D. 1864, as yet of the said stated term of the said circuit court, begun and held on the second Monday of September, A. D. 1864, came the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and A. Fleming, who defends this cause by leave of court, and prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that the the said appeal be, and hereby is, allowed upon a bond being executed according to law, to be approved by the court or judge thereof.

515 And afterwards, on the 30th day of September, 1864, came Hans Crocker, and filed his report for August, as follows:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
LA CROSSE AND MILW. R. ROAD CO. *et als.*

To the judge of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1864.

H. CROCKER, *Receiver.*

Balance cash on hand July 31, 1864	$68, 776 70
Receipts:	
Sundry accounts	55 00
	68, 831 70
Disbursements:	
Loss and damage	$25 00
Incumbrances, east. div.	3, 116 00
First mortgage coupons	116 98
Milw. City do.	17 06
Bal. cash, Aug. 31, 1864	65, 556 66
	68, 831 70

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of August, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of September, A. D. 1864.
W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

516 And afterwards, on the 4th day of October, A. D. 1864, as yet of the said term, came Hans Crocker, esq., the receiver in this cause, and filed his petition, as follows:

517 Circuit court of the U. S. for the district of Wisconsin, in equity.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Hans Crocker respectfully represents to the court that he was duly appointed receiver of the La Crosse and Milwaukee railroad in the case of Sebre Howard against the said railroad and others, now pending in this court; that in pursuance of such appointment he took possession of the road, rolling stock, &c.; that he was afterwards appointed receiver in this cause without any modification of the former appointment, and expressly subject to it; that subsequently, to wit, on or about the 12th day of June, 1863, by virtue of two orders of the district court, made respectively in the cases of Bronson, Soutter, and Knapp *vs.* the La Crosse and Milwaukee R. R. Co. and others, and in this cause, and of an order in this court in said case of Sebre Howard, he gave possession of said road and rolling stock to the Milwaukee and St. Paul Railway Co., who, until the 1st of May, 1864, operated said road and received the revenues thereof, and at stated periods rendering accounts to the receiver of the receipts and expenditures, which are on file in this court. That on or about the 1st of May, 1864, by
518 virtue of an order of this court, he demanded possession of the eastern division of said road and the rolling stock of said company; that the said division of the road was surrendered, but that said company claimed by virtue of the foreclosure and sale of the western division of said road, a large portion of the rolling stock which had been used in operating the road belonged to said company, and refused to deliver such portion, and retained the same. The portion of rolling stock claimed by said company was all the rolling stock on the road at the time the receiver took possession of the road, and an undivided interest in the cars and engines purchased and built by the receiver, such interest depending upon an account of earnings and expenditures to be taken between the two divisions of the road.

The receiver has done nothing to recognize the claim of said company as to the ownership of the said rolling stock, but has deemed it a matter belonging exclusively for the court to determine. The rolling stock surrendered was not sufficient to enable the receiver to operate the eastern division of the road and to do the business thereof, and he was therefore forced either to sacrifice the interest of such division or to make some arrangement with
519 said Milwaukee and St. Paul Railway Company; that he made the best arrangement he could, and one highly beneficial to said eastern division. The arrangement in substance was that the Milwaukee and St. Paul Railway should operate the road as they had since the 13th of June, 1863,

2005-

employing chiefly the same officers and agents, each division paying its portion of expenses; that said company should be allowed for the use of its rolling stock, the division of earnings being the same as heretofore adopted, the receipts and disbursements to be entered in the books before that time used by said company, and as a continuation of the old accounts; that, in the opinion of the receiver, this was the best arrangement that could have been made, but still it was designed only as a temporary one, until the court should again meet and determine the rights of the two divisions as to the ownership of the rolling stock, and upon the propriety of the arrangement so made. At and before the time this arrangement an order was made by this court referring the accounts of the receiver to H. L. Palmer, esq., to determine, among other things, what funds were in the hands of the receiver applicable to the payment of interest on bonds referred to in the pleadings in this case. To ascertain this amount the receiver supposed it would be necessary to determine the ownership of the rolling stock in order to
520 ascertain the net earnings of the two divisions. A large amount of testimony has been taken by the auditor relating to the use and ownership of the rolling stock; but the report is not yet completed, and will not be filed during the present term of the court. The receiver is informed that the court has refused to take any action upon the question of the ownership or possession of the rolling stock till the next April term of this court. The receiver, therefore, under these circumstances, asks the order and direction of the court whether the arrangement between him and the Milwaukee and St. Paul Railway Company shall be continued, and if not, what other arrangement shall be made.

HANS CROCKER, *Receiver,*
By JAMES S. BROWN, *his Att'y.*

And afterwards, on the 28th day of October, 1864, cames Hans Crocker, receiver, and filed the reports or statements by the Milwaukee and St. Paul railway of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad for the months af March, April, May, June, July, August, and September, A. D. 1864.

521 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of March,* 1864.

EARNINGS.

From freight	$40, 210 75
Passengers	22, 531 61
Mails, rents, and miscellaneous	1, 687 56
Use of rolling stock	1, 147 42
Total earnings	65, 577 34

EXPENSES.

Repairs:	
Of road	$9, 937 37
Bridges	41 32
Fences	
Buildings	786 75
Locomotives	944 67
Cars	2, 441 20
Tools and machinery	726 08

Operating :

Management and general offices	$957 75
Foreign agency and advertising	448 26
Station service	3,602 49
Stationery	634 51
Conductors, baggagemen, and brakemen	2,489 07
Train and station supplies	579 19
Engineers, firemen, and wipers	3,897 66
Oil and waste	1,660 10
Fuel	2,490 00
Damage to property	
Loss and damage of freight and baggage	202 26
Personal injuries	
Legal expenses	338 50
Car service	131 93
Miscellaneous expenses	140 21
Animals killed	30 00
Furniture	50 24
Use rolling stock	12,321 62

Other expenses :

Interest and exchange	
New York office expenses	40 60
Taxes and insurance	675 95
Renewal of track	13,924 73
New buildings	7,142 58
Total expenses	66,635 24

RECAPITULATION.

Gross earnings	$65,577 34
Total expenses	66,635 24
	1,057 90

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, March* 31, 1864.

522 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of April,* 1864.

EARNINGS.

From freight	$43,190 93
Passengers	25,258 31
Mails, rents and miscellaneous	1,541 50
Use of rolling stock	2,064 95
Total earnings	72,055 69

EXPENSES.

Repairs:

Of road	$12,118 06
Bridges	33 33

Of Fences	$0 60
Buildings	1,641 88
Locomotives	793 65
Cars	1,714 43
Tools and machinery	584 71
Operating:	
Management and general offices	986 51
Foreign agency and advertising	429 71
Station service	4,137 37
Stationery	48 53
Conductors, baggagemen, and brakemen	2,140 46
Train and station supplies	469 97
Engineers, firemen, and wipers	3,366 95
Oil and waste	1,430 05
Fuel	2,508 32
Damage to property	
Loss and damage of freight and baggage	80 60
Personal injuries	
Legal expenses	
Car service	
Miscellaneous expenses	120 69
Animals killed	
Telegraph	49 32
Rent	12 50
Use of rolling stock	14,174 71
Other expenses:	
Interest and exchange	
New York office expenses	
Taxes—U. S. rev	758 00
Renewal of track	10,966 21
New buildings	5,090 93
State tax	15,221 82
Total expenses	78,884 17

RECAPITULATION.

Gross earnings	72,055 69
Total expenses	78,884 17
	6,828 48

J. P. WHALING, *Ch'f Clerk.*

Auditor's Office, *Milwaukee, April* 30, 1864.

523 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of May,* 1864.

EARNINGS.

From freight	$81,987 03
Passengers	22,723 66
Mails, rents, and miscellaneous	884 96
Use rolling stock	3,682 58
Total earnings	109,278 23

EXPENSES.

Repairs:	
Of road	$14,802 37
Bridges	151 90
Fences	
Buildings	848 62
Locomotives	821 74
Cars	1,723 64
Tools and machinery	1,177 05
Operating:	
Management and general offices	912 57
Foreign agency and advertising	405 80
Station service	4,058 48
Stationery	482 95
Conductors, baggagemen, and brakemen	3,095 81
Train and station supplies	887 53
Engineers, firemen, and wipers	4,878 18
Oil and waste	2,248 07
Fuel	4,743 00
Damage to property	
Loss and damage of freight and baggage	232 66
Personal injuries	
Legal expenses	
Car service	222 85
Miscellaneous expenses	120 07
Animals killed	20 00
Telegraph	71 88
Use rolling stock	21,598 65
Other expenses:	
Interest and exchange	
New York office expenses	
Taxes—U. S. rev	682 91
Renewal of track	10,115 59
New buildings	6,533 74
Furniture	43 76
Total expenses	80,879 82

RECAPITULATION.

Gross earnings	109,278 23
Total expenses	80,879 82
Net earnings	28,398 41

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, May* 31, 1864.

524 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of June,* 1864.

EARNINGS.

From freight	$75,776 50
Passengers	23,502 11

From Mails, rents, and miscellaneous	$1,829 98
Use rolling stock	4,627 37
Total earnings	105,735 96

EXPENSES.

Repairs:	
Of road	15,829 27
Bridges	660 16
Fences	258 43
Buildings	811 46
Locomotives	812 49
Cars	2,484 53
Tools and machinery	2,037 46
Operating:	
Management and general offices	984 23
Foreign agency and advertising	208 72
Station service	4,564 18
Stationery and printing	607 34
Conductors, baggagemen, and brakemen	2,818 13
Train and station supplies	299 94
Engineers, firemen, and wipers	4,224 60
Oil and waste	2,197 39
Fuel	4,135 00
Damage to property	
Loss and damage of freight and baggage	84 54
Personal injuries	100 00
Legal expenses	4,551 73
Car service	2,533 04
Miscellaneous expenses	89 44
Animals killed	188 00
Telegraph	44 34
Use rolling stock	26,184 64
Other expenses:	
Interest and exchange	
New York office expenses	
Taxes—U. S. rev	703 87
Renewal of track	4,761 39
New buildings	3,864 87
Furniture	87 76
Fencing	450 00
Total expenses	86,576 95

RECAPITULATION.

Gross earnings	105,735 96
Total expenses	86,576 95
Net earnings	19,159 01

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, June* 30, 1864.

525 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of July,* 1864.

EARNINGS.

From freight	$50,460	97
Passengers	22,644	60
Mails, rents and miscellaneous	1,876	98
Use rolling stock	2,322	96
Total earnings	77,305	51

EXPENSES.

Repairs:		
Of road	15,576	56
Bridges	622	68
Fences	2	74
Buildings	636	37
Locomotives	1,138	51
Cars	1,571	23
Tools and machinery	859	97
Operating:		
Management and general offices	846	38
Foreign agency and advertising	360	22
Station service	3,665	98
Stationery and printing	217	66
Conductors, baggagemen, and brakemen	2,242	05
Train and station supplies	330	89
Engineers, firemen, and wipers	4,211	88
Oil and waste	2,133	44
Fuel	3,456	50
Damage to property		
Loss and damage of freight and baggage		
Personal injuries	19	00
Legal expenses		
Car service	408	53
Miscellaneous expenses	290	53
Animals killed		
Telegraph	61	30
Rent	12	50
Furniture	51	00
Use rolling stock	14,504	14
Other expenses:		
Interest and exchange	46	88
New York office expenses		
Taxes—U. S. rev	1,813	08
Renewal of track	8,378	20
New buildings	3,821	32
Fencing	24	31
Total expenses	67,303	85

RECAPITULATION.

Gross earnings	$77, 305 51
Total expenses	67, 303 85
Net earnings	10, 001 66

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, July* 31, 1864.

526 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of August,* 1864.

EARNINGS.

From freight	$37, 375 84
Passengers	26, 883 22
Mails, rents, and miscellaneous	2, 312 20
Use rolling stock	3, 444 57
Total earnings	70, 015 83

EXPENSES.

Repairs:	
Of road	$10, 982 23
Bridges	484 87
Fences	
Buildings	446 76
Locomotives	1, 059 33
Cars	3, 193 45
Tools and machinery	876 68
Operating:	
Management and general offices	592 60
Foreign agency and advertising	371 78
Station service	3, 912 17
Stationery	263 00
Conductors, baggagemen, and brakemen	2, 312 50
Train and station supplies	226 64
Engineers, firemen, and wipers	4, 486 61
Oil and waste	2, 407 68
Fuel	3, 074 00
Damage to property	
Loss and damage of freight and baggage	201 95
Personal injuries	
Legal expenses	
Car service	183 41
Miscellaneous expenses	106 29
Animals killed	266 00
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	13 50
Furniture	20 79
Use rolling stock	21, 614 72

Other expenses:	
Interest and exchange	
New York office expenses	
Taxes—U. S. rev	$1,577 11
Renewal of track	15,602 30
New buildings	1,269 85
Total expenses	75,546 22

RECAPITULATION.

Gross earnings	$70,015 83
Total expenses	75,546 22
	5,530 39

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, Aug't* 31, 1864.

527 *Statement of the operation of the Milwaukee and St. Paul railway, eastern division, for the month of September,* 1864.

EARNINGS.

From freight	$33,976 10
Passengers	16,197 32
Mails, rents, and miscellaneous	843 37
Total earnings	51,016 79

EXPENSES.

Repairs:	
Of road	$12,740 66
Bridges	378 91
Fences	
Buildings	417 17
Locomotives	1,316 80
Cars	1,850 60
Tools and machinery	1,517 37
Operating:	
Management and general offices	580 00
Foreign agency and advertising	64 41
Station service	3,768 20
Stationery and printing	217 65
Conductors, baggagemen, and brakemen	2,128 92
Train and station supplies	575 48
Engineers, firemen, and wipers	3,173 58
Oil and waste	1,322 40
Fuel	2,313 00
Damage to property	
Loss and damage to freight and baggage	662 48
Personal injuries	88 67
Legal expenses	

Car service	$114 42
Miscellaneous expenses	181 02
Animals killed	
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	43 61
Locomotive service	1,732 00
Furniture	7 75
Other expenses:	
Interest and exchange	36 28
New York office expenses	
Taxes—U. S. rev	1,270 22
Renewal of track	1,256 27
New buildings	525 60
State tax	15,221 82
Total expenses	53,505 29

RECAPITULATION.

Gross earnings	$51,016 79
Total expenses	53,505 29
	2,488 50

J. P. WHALING, *Ch'f Clerk.*

AUDITOR'S OFFICE, *Milwaukee, Sept. 30th,* 1864.

528 And afterwards, to wit, on the 28th day of October, A. D. 1864, came the said Milwaukee and Minnesota Railroad Company and the said A Fleming by their counsel, and filed their bond for appeal, with sureties duly approved by the Honorable Andrew G. Miller, district judge, and one of the judges of said court, which bond, with the approval thereon, is as follows, viz:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., trustee, &c., complainant,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others, defendants.

Know all men by these presents that the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and Alexander Fleming, who defends this cause by leave of court in name of Milwaukee and Minnesota Railroad Company, as principals, and Austin Gunnison and Geo. C. Stevens as sureties, are held and firmly bound unto James T. Soutter, survivor of Greene C. Bronson, deceased, complainants in this cause, in the penal sum of five hundred dollars, lawful money of the United States, 529 for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this 4th day of October, A. D. 1864. *Provided, however,* the condition of this obligation is this: Whereas the Milwaukee and Minnesota Railroad Company and Alexander Fleming, above bounden, have appealed in this cause to the Supreme Court of the United States: Now, therefore, if the said Milwaukee and Minnesota Railroad Company and the said A. Fleming shall prosecute their said appeal to effect, and answer all costs in case they shall fail to make good their appeal, then this obligation shall be void; otherwise, of force.

The Milwaukee and Minnesota Raiload Company, by—

AUSTIN GUNNISON, [SEAL.]
One of the Directors of said company.
A. FLEMING. [SEAL.]
AUSTIN GUNNISON. [SEAL.]
GEO. C. STEVENS. [SEAL.]

530 DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison and Geo. C. Stevens, each for himself, being first duly sworn, on oath, says that he is worth the sum of five hundred dollars over and above all liabilities and exemptions of property from forced sale on execution, and that he is a citizen, resident, and freeholder of the State of Wisconsin.

AUSTIN GUNNISON.
GEO. C. STEVENS.

Subscribed and sworn before me this 27th day of October, A. D. 1864.

JAMES McFARLIN,
Commissioner U. S. circuit court, District of Wisconsin.

I hereby approve the within bond and sureties thereof, and allow said appeal this 28th day of October, A. D. 1864.

A. G. MILLER, *District Judge.*

531 The United States of America to James T. Soutter, survivor of Greene C. Bronson, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at Washington, on the first Monday of December next, pursuant to an appeal filed in the office of the clerk of the circuit court of the United States for the district of Wisconsin, wherein the Milwaukee and Minnesota Railroad Company and Alexander Fleming are appellants, and you are appellee, to show cause, if any there be, why the decretal order and other orders in said cause mentioned in said appeal should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James M. Wayne, first associate justice of the Supreme Court of the United States, this 28th day of October, in A. D. 1864.

A. G. MILLER, *District Judge.*

I hereby admit service of this citation this 28th day of October, A. D. 1864.

THOMAS L. OGDEN, *Sol. for comp't.*

532 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office, and being a continuation of the records and proceedings subsequent to the fourth day of January, 1864.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 29th day of October, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.]

Fees $159 20.

A. SCOTT SLOAN, *Clerk.*

Filed November 5, 1864.

2079

Supreme Court of the United States.

No. 280.

THE MILWAUKEE & MINNESOTA R. R. CO. and
A. FLEMING, Appellants,

vs.

JAMES T. SOUTTER, Survivor of Greene C. Bronson,
deceased.

BRIEF FOR APPELLANTS.

MATT. H. CARPENTER,
Counsel.

Gideon & Pearson, Print., 511 9th st., Washington.

1 Bland 409

2021

Supreme Court of the United States.

No. 280.

THE MILWAUKEE & MINNESOTA RAILROAD
COMPANY AND A. FLEMING, APPELLANTS,

VS.

JAMES T. SOUTTER, SURVIVOR OF GREENE C. BRONSON, DECEASED.

Brief for Appellants.

Bronson and Soutter commenced this suit in the District Court of the United States for the District of Wisconsin, in equity, Dec. 9, 1859, to foreclose a mortgage given by the La Crosse & Milwaukee Railroad Company to them, as trustees, to secure bonds of said company to the amount of one million of dollars.

Various appeals have been taken, and under the rule providing that when any appeal after the first shall be taken, the clerk shall transmit to this court only so much of the record as exhibits the proceedings in the court below from and after the next preceding appeal, it is necessary to refer to the returns on all the former appeals, as well as this, for the entire record in the suit; and all are before the court in this appeal, and would have been returned again but for the rule.

These appeals are—

1. The complainants' appeal from the decree of the district court—decided last term.
   Record 132, Dec. T., 1863.

2. The two appeals of the Milwaukee and Minnesota Railroad Company—one from the circuit and one from the district court.
   Circuit Court appeal, Rec. No. 268, Dec. T., 1863.
   District Court appeal, Rec. No. 267, Dec. T., 1863.

3. The two appeals of Graham & Scott—one from the circuit and one from the district court.
   Circuit Court appeal, Rec. No. 216, Dec. T., 1864.
   District Court appeal, Rec. No. 217, Dec. T., 1864.

4. This appeal.—Rec. No. 280, Dec. T., 1864.

The two appeals of the Milwaukee & Minnesota Railroad Company disposed of at the last term were taken for the purpose of reviewing an order of the court below refusing to discontinue the receivership of the mortgaged premises, pending the appeal of the complainants in this cause, which suspended the decree, (1 Wallace, 409,) and were, therefore, regarded as taken from an order before final decree, and for that reason dismissed.

The appeals of Graham & Scott were virtually disposed of on their merits by the opinion of this court in the principal case, and were subsequently dismissed by the appellants.

On the hearing of the principal appeal, No. 132, last term, this court disposed of the questions put in issue by the pleadings, and held—

1. That the complainants were entitled to the whole

amount, principal and interest, of the bonds secured by their mortgage.

2. That the foreclosure of the Barnes mortgage extinguished all liens of judgments subsequent in date to that mortgage, and

3. That the equity of redemption of the mortgaged premises passed to the purchaser at the foreclosure sale of the Barnes mortgage—the Milwaukee and Minnesota Railroad Company; and remanded the cause, with directions to the court below to proceed to final decree in accordance with the opinion of this court.

Under this mandate the circuit court has rendered a final decree, from which the Milwaukee & Minnesota Railroad Company has taken a general appeal; which this court, on motion to dismiss, has decided to be properly taken; and the whole cause is, therefore, again before this court.

It is well settled that in an equity cause no appeal can be taken from any order made prior to the final decree. But when final decree has passed in the court below, and an appeal is taken therefrom, this court will not only examine the final decree, but also, all interlocutory orders or proceedings by which the appellant claims to be aggrieved. An order purely discretionary, relating for instance, to matters of practice, as a continuance or an amendment, can not be reviewed on an appeal from the final decree; but any order which denies to a party a substantial and undoubted legal right, or subjects him to any illegal burthen, may be reviewed, indeed, must be, or the party is entirely without remedy.

I.

The appellants object to the following orders and proceedings, and ask that they may be reversed, and for such relief in the premises as equity requires.

1. An order made *by the judge*, April 22, 1861, direct-

ing the receiver to pay $28,801.92 to Selah Chamberlain, on the Cleveland judgment, so called.

Record No. 132, Dec. Term, 1863, p. 298.

2. An order by the court, Jan. 9, 1862, directing the receiver to pay Chamberlain $4,148.06, on an unproven claim.

Same Record No. 132, p. 586.

3. An order by the district court, Nov. 28, 1862, directing the receiver to pay Chamberlain $15,000 on said Cleveland judgment.

Record No. 267, p. 8.

4. An order by the district court, Feb. 19, 1863, directing the receiver to pay the City of Milwaukee $600, "for its fees and expenses in and about this cause, and the cause of Bronson, Soutter and Knapp."

Record 267, p. 13.

First. These orders were irregular in this, that they were granted without notice.

The disposition of funds or property in court, that is in the receiver's hands, is carefully guarded from abuse by the proper chancery practice. To justify such disposition upon a motion, it must be a case where the title of the party claiming *is perfectly clear*, has been admitted or adjudicated; but even then there must be a motion, and notice of it must be given, not merely to opposite party through his solicitor, *but must be served upon the party personally.* And in those cases where the right is not established, the court will not act *on a motion* thus noticed; but there must be a formal petition.

1 Barber Ch. Pr., 579.
1 Smith's Ch. Pr., 669.
2 Harrison Ch. Pr., 130, 0 paging.
Heathcote vs. Edwards, Jacobs, 504.
Ld. Sherbrook vs. Ld. Hichenbrook, 13 Ves., 387.

No opportunity was given to contest the propriety of these payments, by showing the claims to be unfounded. The Cleveland judgment had been rendered in the district court; but we claimed that in equity it had been satisfied, and ought to have been discharged long prior to these orders.

Second. The Cleveland judgment was not a lien upon the mortgaged premises. There is no statute of Wisconsin making judgments a lien upon railroads. The statute makes a judgment a lien upon real estate. So the statute authorizes real estate to be sold on execution; and whatever is real estate for the purpose of receiving the lien of the judgment, must be held liable to sale under the same terms in the statute concerning sales on executions. That such sale of a railroad and franchises cannot be made is pretty generally conceded.

Covington Drawbridge Co. vs. Shepherd, 21 How., 112.

Liens of judgment rendered by the Federal courts depend entirely upon State statutes.

Massingell vs. Downs, 7 How., 760.
Williams vs. Benedict, 8 How., 107.
Bank Tennessee vs. Horn, 17 How., 157.

Third. Should this court be of opinion that the Cleveland judgment was a lien upon the mortgaged premises—railroad, rolling stock, and franchises—still its lien was subordinate to that of the mortgage, for the benefit of which the receiver had been appointed; and Chamberlain was taking no steps to enforce its collection, either by creditors' bill on his own behalf, or by cross-bill in this cause. In his answer he sets forth this judgment, and prays that it may be paid out of the surplus arising on the sale. This did not make Chamberlain an actor in the cause, or entitle him to any affirmative relief as against co-defendants. This could only be done by a cross-bill.

Miller vs. McGalligan, 1 Green (Iowa), 527.

The owner of the equity of redemption was interested, and had a right to insist that the funds should be accumulated in the receiver's hands to satisfy the interest due on the mortgage being foreclosed.

Fourth. The first order was made by the judge, not by the court. A judge has no more right, in vacation, to disburse a fund from the court, than he has to render a final decree in the cause. The fund is in court, and not in the keeping, or under the control of a judge; and his order was a nullity, and no more protection to the receiver, than would have been an order by the clerk.

Fifth. The order directing the payment of money to the City of Milwaukee is the least defensible of all. The city was not a party to the cause; could not be affected by the proceedings therein; and does not appear from the record ever to have appeared in the cause for any purpose whatever; had not a shadow of right to any portion of the funds in court, and does not appear to have done more than make a verbal request for the money.

Sixth. The last two orders were made by the district court after it had ceased to have any jurisdiction in the cause, as this court has decided.—1 Wallace, 405. They are, therefore, utterly void, and no protection to the receiver.

After this cause was remanded to the court below, the Milwaukee and Minnesota Railroad Company petitioned the court below to vacate these orders for payment of money to Chamberlain.—Record 280, pp. 32, 33. This petition was denied by disagreement of the judges.—Record 280, p. 66.

All these orders ought to be reversed, and the repayment of the money enforced by attachment, if necessary.

II.

The appellants also complain of the denial of their petition to the circuit court, since this cause was remanded, for leave to pay into court all the money due the complainants in this cause, and for possession of the mortgaged premises.

It is admitted that the order denying this petition could not be appealed from before a final decree in the cause. And it is submitted that the decision of this court dismissing the former appeal of the Milwaukee & Minnesota Railroad Company, rests only upon this ground; and now, when this cause is before this court, by a proper appeal, the decision of the court below upon this petition can be reviewed here. Whether or not the mortgaged premises should be continued in the possession of a receiver until final decree, or offer to pay into court the amount due, was a matter entirely within the discretion of the court below. But after this court had fully determined the rights of the parties to this litigation, fixed the amount due the complainants, declared the Milwaukee & Minnesota Railroad Company to be the owner of the equity of redemption, and this company had offered to pay into court the amount due the complainants, it was no longer in the discretion of the court below to retain or release the mortgaged premises. The receiver had been appointed for the purpose of having the earnings of the road applied to the complainants' benefit, and for no other purpose. When this end was accomplished, the owner of the equity of redemption had a legal right to the possession of the property; and the refusal of the court below to protect that right may be reviewed in this court.

The question as to whether the receiver ought to have been discharged, and the property delivered to the Milwaukee & Minnesota Railroad Company, must be determined from the record alone.

The receiver being discharged, the Milwaukee & Minnesota Railroad Company was the party entitled to possession of the road and other things in his hands. The record shows that the La Crosse & Milwaukee Railroad Company, from January, 1850, until May, 1860, was a corporation under the laws of the State of Wisconsin; and was authorized to, and did build its line of railroad, and equip and put it in operation from Milwaukee to La Crosse. In June, 1858, this company made a mortgage to William Barnes, trustee, and in August, 1858, made a supplemental mortgage to said Barnes upon the whole road from Milwaukee to La Crosse, and upon all the property, rights, privileges, and franchises, things in action or possession of said company. Page 277 to 296, printed record No. 132. The said mortgages were duly foreclosed in May, 1859, and the purchasers became incorporated under the corporate name "The Milwaukee and Minnesota Railroad Company."

Page 241 to 249, printed record No. 132.
R. Stat. Wis., 1858, Ch. 77, Sec. 33.
Chap. 10, General Laws, 1859.

The corporate character of this company has been recognized by the Legislature of Wisconsin since its organization as aforesaid.

Ch. 28 Pr. Laws, 1862.
Gospel Society v. Pawlet, 4 Pet., 480.

The Minnesota Company, by its purchase at the foreclosure sale, became the owner of all the property of the old company, subject to all legal incumbrances thereon; and, as such, acquired the right which the debtor company possessed to redeem the property from all incumbrances prior to that upon which it became the purchaser.

Page 25 of printed record No. 267.
Murphy v. Farwell, 9 Wis. Rep., 102.
Allen v. Case, 13 Wis. Rep., 621.

And the foreclosure under which it purchased, extinguished all subsequent incumbrances. It was, therefore, entitled to possession unless some other party or person could show a better right thereto.

Its right to possession was resisted:

1. By the complainants.
2. By Howard, a judgment creditor.

3. By Chamberlain, who claimed that he was entitled to the possession by virtue of a lease, and entitled to have the receiver continued to protect his judgment against the debtor company and the Cleveland judgment, of which he was the owner.

First. The right of the complainants to a receivership, after full payment of all that was due on their mortgage, needs no answer.

Second. The Howard judgment was disposed of in the opinion of this court in the principal case.—No. 132, last Term. This court held that it was extinguished by the foreclosure of the Barnes mortgage. Howard and the Milwaukee & Minnesota Railroad Company were both parties to the cause in which this decision was made, and both are bound by it. The record then before the court, and upon which its decision was made, disclosed the fact that the judgment of Howard against the old company, was rendered in the Federal court, upon a judgment rendered in the State court, May 1, 1858, before the date of the Barnes mortgage.—Record 132, pp. 20, 21.

But it was the judgment of the Federal court which Howard sets out as his claim against the company; and that was subsequent to the Barnes mortgage; and this court held that it was extinguished by that foreclosure. This decision is as conclusive between Howard and the Minnesota Company, as the decision of the amount due is conclusive between all the parties. That decision and the mandate upon it, are the law of the case, right or wrong.

Washington Bridge Co. vs. Stewart, 3 How., 413.
Chaires vs. U. States, 3 How., 611.
West vs. Bearshaw, 14 Pet., 51.
Skillem's Ex'rs vs. May's Ex'rs, 6 Cranch, 267.
Ex parte Story, 12 Pet., 339.

Second. But it is submitted, that were this still an open question, the ruling must be the same. When a judgment of a State court is sued over in the courts of that

State, the second suit may be regarded as a proceeding to revive the former judgment; performing the office of the writ of *scire facias*. But this can only be so, when the second suit is in the same government and jurisdiction that pronounced the original judgment. A *scire facias* could not be maintained in one State upon a judgment rendered in another State. Nor could the judgment of a State court be revived by a *scire facias* in the Federal court for same district. Although the Federal court for the district of Wisconsin, and the courts of that State, exercise their authority in the same territory, and over the same people, they are as distinct for all the purposes of their jurisdiction, as are the courts of Wisconsin and Michigan.

Booth's Case, 22 How.

Howard might have maintained a *scire facias*, or an action of debt in the State courts of Wisconsin, founded on a judgment of that court, without destroying the lien of the first judgment. But when he takes a transcript from the courts of Wisconsin and goes into the courts of another government, State or Federal, he is not reviving and continuing the effect of a former judgment, but seeking a new judgment, using the record only as the evidence of his right to recover. Can a judgment in the State of Maine be revived, and its lien continued, by proceedings in the courts of California? The new judgment in another government must be deemed a merger of the original judgment.

Third. But conceding that the judgment in the Federal court did not merge the State judgment; that both existed as valid judgments, and that executions might be out at the same time on both judgments; yet Howard had not become an actor by cross-bill, had not asked the appointment of a receiver; on the contrary, his written stipulation was on file and of record in this cause, consenting to the discharge of the receiver, and that the property might be delivered to the Minnesota Company.

Record No. 267, pp. 3, 4.

Fourth. The whole amount claimed on the Howard judgment was only about $20,000. Was it necessary or proper to continue a receivership over millions of dollars' worth of property to protect this judgment?

CHAMBERLAIN.

The old company made to Chamberlain a pretended lease of its road in September, 1857, (page 250, printed record No. 132,) and afterwards, in October, 1857, confessed a judgment to him for $629,089.72 in the district court for district of Wisconsin. While Chamberlain was in possession under the lease, one Cleveland exhibited his bill of complaint in the said district court against the old company and Chamberlain, for the purpose of setting aside said lease and judgment, upon two grounds: first, that the company had no legal authority to make it—Record No. 268, p. 101; in which case it would be a nullity as between the parties to it; and second, because, as the bill charged, the lease and judgment were given and confessed *with the intent* to thereby hinder and delay creditors.

See Record No. 267, p. 118.

Afterwards, on the 11th February, 1859, the district court made a decree, apparently upon the first theory of the bill, that the company had no authority to make the lease, and set it aside altogether, enjoining Chamberlain from afterwards pretending any right whatever under the lease. The court also, by the same decree, *absolutely vacated* the judgment. The language of the decree is as follows:

"It is ordered, adjudged, and decreed by the court, "that the article of agreement" [the lease] "be and hereby "is vacated, annulled and made void, so that the same "shall not hereafter be of any force or effect whatever.

"And that the said Chamberlain be and hereby is per- "petually enjoined and restrained from using, managing, "running, controlling, or meddling with said railroad, or "the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

"And it is further ordered, adjudged, and decreed by "the court, that the judgment of the said Selah Chamberlain against the La Crosse & Milwaukee Railroad "Company, entered in this court" * * "and all executions and proceedings thereon be, and hereby are, vacated, annulled, made void, set aside, so that the same "shall have no further effect whatever."

Record 268, p. 105.

2. This decree may be erroneous. It may go beyond the prayer of the bill, and Chamberlain might have been able to reverse it, had he taken an appeal while he was honestly defending his interests in the case. But after he came to represent both sides, this court dismissed his appeal as a fraud upon the court.

Cleveland vs. Chamberlain, 1 *Black*, 419.

CHAMBERLAIN ABANDONED HIS CLAIM.

The La Crosse & Milwaukee Railroad Company, in 1857, gave possession of its railroad, rolling stock, and franchises to said Chamberlain, under the lease to him; Chamberlain agreeing to pay, among other things, the very interest for the recovery of which this suit is brought, before making any application upon the pretended indebtedness to him.

See lease, record No. 132, page 250–252.
Allegations of the bill, same record, p. 8.

The company subsequently made the mortgages to Barnes, under which the Milwaukee & Minnesota Railroad Company acquired title to the premises, and became the successor of the debtor company. The lease therefore bound Chamberlain to protect the rights of the latter company by paying this interest.

In the account of Chamberlain, as reported by the masters, it is shown that Chamberlain received *net*, that is, after paying all operating expenses, as follows:

See pages 323 *and* 324 *of Record No.* 132.

“Net earnings of	May,	1859	$14,025	53
“ “	June,	“	18,175	59
“ “	July,	“	662	10
“ “	Aug.,	“	19,308	98
“ “	Sept.,	“	66,264	48
“ “	Oct.,	“	71,980	37
“ “	Nov.,	“ (part of)	18,446	73
			“$208,863	78”

Thus proving that from the *net earnings* of the road, in but little more than six months immediately preceding the commencement of the foreclosure proceedings, he received more than $200,000 in cash, and yet neglected to pay $40,000 of interest, which the terms of his lease bound him to do.

The record shows that when this suit was commenced but $40,000 interest was due; that Chamberlain then had in his hands over $200,000, earnings of the road received under this lease, from which it was clearly his duty to have paid this $40,000, and thus have prevented this suit.

But designing to cheat and defraud the Milwaukee & Minnesota Company, and become the absolute owner of the property he held in trust, Chamberlain, *who held one-fifth of the bonds secured by this mortgage*, neglected to pay the interest, in the hope of securing a foreclosure sale of the premises. There is no chance for difference of opinion as to the conduct of Chamberlain, legally or morally; it was clearly dishonest and fraudulent; and by thus retaining the money he ought to have paid on this mortgage, and voluntarily surrendering possession of the premises, he must be deemed to have abandoned the lease and all rights under it.

Record No. 132, page 78.

This he undoubtedly did under the impression that all right under the lease was destroyed by the Cleveland decree.

This decree must therefore remain; and when it is offered as evidence in another suit between any of the same parties, or those in privity with them, it is conclusive. In this collateral way the court cannot inquire whether or not the decree was erroneous. It is unreversed, and was pronounced in a suit in which the court pronouncing it had undoubted jurisdiction over the subject-matter of the cause and the parties to it. Had the company exhibited a cross-bill against Chamberlain, the court might properly have vacated the lease and judgment between the parties, as well as to creditors; and although the filing of the cross-bill would have been more regular, yet the decree without such cross-bill is at most only erroneous and not void.

Gould vs. Stanton, 16 *Conn.*, 12–20.

3. It is said this decree is not conclusive in this suit, and between the Milwaukee & Minnesota Railroad Company and Chamberlain, because this company was not a party to the suit. To this we answer: First, the decree was binding and conclusive between the La Crosse & Milwaukee Company and Chamberlain, who were parties to the cause; and would be conclusive in any new suit in which one of these defendants was a plaintiff and the other a defendant.

Story Eq. Pl., sec. 72, 73.
Farquharson vs. Seaton, 5 *Russell*, 45.
S. C. 5 *Eng. Ch. Rep.*, 46.

The Milwaukee & Minnesota Company is in privity with the La Crosse & Milwaukee Company, and acquired its title under a mortgage which was given by the La Crosse Company pending the Cleveland suit; therefore this decree is binding and conclusive between the Minnesota Company and Chamberlain.

Gould v. Stanton, 16 Conn., 12–20.

Second. A judgment or decree of a court of competent jurisdiction is always evidence in a suit between strangers of the fact of its rendition. The question here is, whether or not Chamberlain is a lien creditor. He says he is, and to prove it he produces a lease from the La Crosse Company to him, [to which we are not a party,] and the record of a judgment in his favor against the La Crosse Company, to which we were not a party. Nobody doubts that this is competent evidence; yet what makes it so against the Minnesota Company, which was no party either to the lease or judgment? The reason is, that a judgment is "the only proper evidence of itself, and is conclusive evidence of the fact of the rendition of the judgment, *and of all the legal consequences resulting from* *that fact*, whoever may be the parties to the suit in which it is offered in evidence."

1 Green'l Ev., sec. 538.

So when we undertake to show that Chamberlain is not a lien creditor the decree to which he and the La Crosse Company were parties, annulling his lease absolutely, "so that the same [should] not hereafter *be of any force or effect whatever*," and absolutely setting aside, and "*vacating*" the judgment is *conclusive evidence* that there is no longer any lease from the company to him; no longer any judgment in his favor against the company. The effect of the decree was to vacate the judgment as clearly as a judgment of reversal on writ of error. The decree does not leave the lease and judgment good between the parties, postponing them as to creditors. It absolutely annuls and destroys both. When a judgment is *vacated* by a court of competent jurisdiction, it is a judgment no longer for any purpose or between any parties.

It is impossible to employ more explicit language to destroy the lease and judgment, *even as between the parties to them*, than that used in this decree. The decree may be erroneous, but not being appealed from, its effect cannot be controlled or limited in this collateral suit, by showing that it is broader than the allegations or proofs in that cause authorized.

4. But if the court should hold that the decree in the case of Cleveland vs. the La Crosse Company and Chamberlain, did not have the effect to annul the lease and vacate the judgment; yet Chamberlain is not to be regarded as a lien creditor.

He can claim to be such only by virtue of his lease or judgment, or both.

As to the judgment, it is not a lien as we have shown before.

As to the lease: First, there was at that time no law of Wisconsin authorizing a corporation to lease its road and franchises, and for want of such authority the lease is void.

Beman vs. Rufford, 6 E. L. & Eq. Rep., 110.
Winch vs. Birkenhead, &c., 13 E. L. & Eq. Rep., 516.
The Great Nor. vs. The East Ang., &c., 41 Eng. Ch. Rep., 306.
S. C., 7 Hare Rep., 306
The New York & M., &c., vs. Winans, 17 How., 30.

An incorporated company cannot form a partnership with another company.

Sharon Canal Co. vs. Fulton Bank, 7 Wend., 412.

The attempt to draw a distinction between the right of the company to lease its franchise to exist, which it is conceded cannot be done, and its right to transfer its franchise to operate the road, which it is claimed can be done, is borrowed from a remark of Curtis, J., in

Hall vs. Sullivan, R. R., 2 Curtis' Rep.

But that case did not so decide; and the case

Peter vs. Kendall, 6 B. & Cres., 703.

cited by Judge Curtis to sustain this distinction, did not involve this point. In that case Peter had leased a ferry to Brown, but afterwards Brown had surrendered to Peter, and become his servant. It was objected that the action should have been in the name of Brown, but the court held that he, having surrendered, and become the tenant of Peter, the action was well brought; and the court were not called upon to decide, nor did they, upon the validity of the lease to Brown. But Judge Curtis said in this opinion, that if compelled to decide the question, he should follow *Pierce vs. Emery*, 32 *N. H.*, 484, where it was held that without legislative license, no transfer of the right to operate the road could be made. It is impossible for a corporation to make a contract or conveyance by which it puts it out of its power to perform its duties to the public.

Clark vs. Washington, 12 Wheat., 40.

As to the duty of the courts to confine corporations to such powers as are expressly granted them, and not by implication enlarge those powers in favor of monopolies and against the public; see

C. J. Taney, Warren Bridge case, 11 Pet., 544.
Perine vs. Ches. & Del. C. Co., 9 How., 183.

To avoid this objection it is claimed that this instrument is not a lease as it purports to be, but is in legal effect a mortgage, and that by its charter and the laws of the State, the company had authority to make a mortgage. To this it may be said (1) that the authority to make a mortgage should be exercised according to the manifest intention of the legislature by giving a mortgage in the usual form to be foreclosed on default by the company. If the mortgage is so given as to perform the office of a lease, and give possession before condition broken, then it is as illegal as a lease proper. What cannot be done directly, the law does not permit to be done indirectly. But the more conclusive objection to the validity of said instrument, whether treated as a lease or mortgage, is that it is void on its face as to creditors, without regard to the intention, in fact, with which it was given.

See Lease, p. 250, printed record No. 132.

It is void in law because it hinders and delays creditors; covers up the property of the debtor company; enabling the company to complete its road out of the profits of its business; setting its creditors at defiance.

Twine's Case, 2d *Resolution*.

In *Pickstock vs. Lyster*, 3 *Maule and Sel.*, 317, an assignment was upheld, the court saying: "*This was not a deed by which the party stipulated for any benefit to himself*, but all the property of the party is to be distributed among his creditors including this creditor." In Holbird vs. Anderson, 5 T. R., 235, the court, Lord Kenyon says: "There was no fraud in this case, the plaintiff was preferred by his debtor charter *not with a view of any benefit of the latter* but merely to secure a just debt," conveyances to secure future benefit, support and maintenance are void.

Crane vs. Stickles, 15 *Vert.*, 252.
Jones vs. Spear, 21 *Vert.*, 426.

The slightest trust reserved in favor of the grantor is fraud upon creditors.

Colburn vs. Pickering, 3 *N. H.*, 415.
Russell vs. Hammond, 1 *Atkins*, 16.
Mackie vs. Cairnes, 5 *Cow.*, 566.
Barnes vs. Griffin, 2 *Cow.*, 365.

This general doctrine applies to any and every conveyance, transfer, assignment, grant, lease, mortgage or other devise, by which a debtor seeks to protect his property from his creditors, while he is to derive any benefit therefrom. The law forbids the thing itself, and not the means by which it is accomplished. The lease or mortgage is subject to this objection; it was designed to secure the completion of the road, a benefit to said company. It was a device by which the company, an embarrassed debtor, proposed to continue its business uninterrupted and pay its debts out of the profits, and is therefore void.

Owen et al. vs. Body et al., 5 *Adol. & Ellis*, 28.

The lease is also void because it secured to Chamberlain not only what was then pretended to be his due; but for what would become his due for things by him *thereafter* to be done for the benefit of the company.

Barnum vs. Hempstead, 7 *Paige*, 568.

It also authorizes Chamberlain in his discretion to an unlimited amount to invest the avails realized by him in rolling stock for the company's benefit. It is not per-

2039

mitted to a debtor in a trust deed or mortgage to dispose of his property, reserving to himself or giving to the assignee or grantee any discretion to divert the fund in another direction than that named by the debtor in the mortgage or assignment, and such discretion reserved or given renders the instrument void.

In Arthur vs. The Bank, &c., 9 Smedes & M., 394, and in Bodly vs. Goodrich, 7 How., 276, a contract between a railroad company and others, which is in principle not distinguishable from this, was declared void as against creditors. If this instrument which we call a lease be held a mortgage, then the instrument which was held void in the last named cases was a mortgage also.

5. The lease was given with intent, as matter of fact, to hinder, delay, and defraud creditors, and is therefore void.

> Testimony of Kilbourn, pages 445 to 450, printed record No. 132.

6. If the lease is void as to creditors, the judgment is equally so, because it was confessed to carry out the design of the lease, particularly to hinder, delay, and defraud Vose, Livingston & Co.

> Testimony of Kilbourn, p. 447, 448, printed record No. 132.

7. Without asking any aid from the decree in the case of Cleveland annulling the lease and vacating the judgment, it is manifest that when Chamberlain here interposes an objection to the possession of the company, founded upon his lease or judgment, it is competent for the company, in its capacity as purchaser at foreclosure sale to object, that the lease and judgment are void; and for this purpose may use the testimony taken before the master between the said company and Chamberlain.

When a creditor becomes purchaser at sheriff's or foreclosure sale of his debtor's property, he may object to any conveyance made by his debtor with intent to defraud creditors, which prejudices his right to the property purchased.

Wadsworth vs. Havens, 3 Wend., 411.
Chataque Co. Bank vs. Risley, 19 N. Y., 369.
Frakes vs. Brown, 2 Blkf., 295.
Pennington vs. Clifton, 11 Ind., 162.

A conveyance void as to creditors may be objected to by subsequent creditors.

Smith vs. Lovell, 6 N. H., 67.
Paul vs. Crocker, 8 N. H., 288.
Wadsworth vs. Havens, 3 Wend., 411.
Clark vs. French, 10 Shep., 221.
McCormick vs. Sanger, 12 N. H., 396.
Damon vs. Bryant, 2 Pic., 411.
Tremble vs. Turner, 13 Smedes & M., 348.
1 Story Eq. Jur., Sec. 361 and notes.

Cleveland Judgment.

The record shows that after the decree in the Cleveland cause, Chamberlain, in defiance of the perpetual injunction therein contained, continued in possession and operation of the road, until he voluntarily delivered possession to the complainants, after the commencement of this suit, but before the appointment of the receiver therein; and that after the Cleveland decree, and after he became the owner of the Cleveland judgment, he received from the earnings of the road more than the amount of this judgment, for which he has never accounted to any party or person. And we claim that in equity this sum should be applied in satisfaction of the Cleveland judgment, and he be compelled to account for the surplus.

This disposes of all the grounds upon which Chamberlain claims possession of the mortgaged premises.

The decree in this cause is in direct violation of the mandate, and must be reversed.

The mandate is clear and unambiguous.

"That the court ascertain the amount of moneys in the "hands of the receiver or receivers from the earnings of "the road covered by the mortgage which may be appli-"cable to the discharge of the interest, and apply it to "the same, and that if the money thus applied is not suf-"ficient to discharge the interest due on the 1st day of "March, 1864, then, *to ascertain the balance* remaining due "at that date, and in case such balance is not paid *within* "*one year from the date of the order of the court ascertaining* "*it*, then an order shall be entered directing a sale of the "mortgage premises," &c.

Record No. 280, p. 9.

It was said in the court below, that the Supreme Court, gave a year's time to the defendant, expecting that this balance could be speedily ascertained; and would not otherwise have done so. This can never be know. It is not impossible that a better argument on behalf of my client, at the hearing, might have produced a different result altogether. The court however has determined the rights of the parties, and in the mandate fixed the events from which the year shall begin to run.

"The inferior court is bound by the decree of the court as the law of the case; and must carry it into execution according to the mandate. *They cannot vary it;* or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal *for error apparent; or intermeddle with it* further than to settle so much as has been remanded."—Baldwin J. Sibbald vs. U. S., 12 Pet., 488.

See also, West vs. Brashear, 14 Pet., 51.

In equity, the time should not begin to run until it be ascertained how much is to be paid on redemption. The complainants had had a receiver in this cause several years, who had received millions of dollars and it was equitable, and nothing more, for this court to adjudge that it should first be ascertained how much we ought to pay, before we should be considered in default for not paying it. At the first term of the circuit, after the decision of this court, the defendant offered to pay into court *all* that was due on the mortgage, including costs, expenses, and counsel fee, within some short time to be fixed by the court, and take its property. To this the complainant objected. Printed Motion papers, p. 2.

Record No. 280, this Term, p. 1.

And the court, by division of judges, refused it.

Record No. 280, p. 66.

These bondholders would not have their money, but the defendant's ruin. And after having refused their money they were in no position to ask the aid of the circuit court to force a sale of the property in disregard of the clearest language of the mandate.

The circuit court is proceeding to ascertain the balance, according to the mandate.

See order reference. Record 280, p. 67.
Order modifying same. Printed and motion papers for mandamus, p. 3.
Stipulation of parties enlarging rule.
Printed motion papers for mandamus, p. 37.

This reference is still pending and undetermined.

At the Sept. term, 1864, of circuit court, the defendant applied for an order on the receiver to pay over the amount admitted to be on hand, about $200,000, to apply on the interest due, according to the mandate.

See affidavit and motion, Record 280, p. 112.
See account showing balance. Printed motion papers, p. 33–4–5.
Receiver's report showing amount in his hands. Motion papers, p. 40.

This, the mandate clearly required, but the judges being divided in opinion as to the propriety of obeying it, the motion was denied.

Record No. 280, p. 263.

At the same term, without ascertaining the amount of money in receiver's hands, or making any order applying the same to the interest due, and while the records of the court showed a large sum in the hands of the receiver, applicable to the payment of interest, the court made an order ascertaining the amount due the complainants, and ordered that the premises should be sold unless that amount should be paid within one year from the date of said order.

Record No. 280, p. 261.

This decree being in open violation of the madate, should be reversed, and the circuit court be directed, as before directed, to ascertain the balance to be paid by the defendant, before the year within which it is to be paid shall begin to run.

Perkins v. Fourniquet, 14 How., 330.

MATT. H. CARPENTER,

Counsel for Motion.

7302

IN THE SUPREME COURT.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, AND A. FLEMING, Appellants,
vs.
JAMES T. SOUTTER, SURVIVOR OF GREENE C. BRONSON, DECEASED, Appellee.
No. 280.

THIS appeal is in the second mortgage foreclosure suit, so called, which was heard and decided in this court at the last term as number 132. The complainants, Bronson and Soutter, and the defendants, Milwaukee and Minnesota Railroad Company, appealed, and their appeals were all heard at the same time. The appeal of the complainants was from the final decree and that of the Milwaukee and Minnesota Company, from the final decree and subsequent orders, particularly the order denying the petition of said defendant to have order of June 12th, putting the Milwaukee and St. Paul Railway Company in possession vacated, and to be let into the possession of the mortgaged prsmises. The appeals from the final decree were heard upon the merits, and the other appeals were dismissed for want of jurisdiction, for the reason that the order refusing to vacate the order of June 12th, putting the Milwaukee and St. Paul

Railway Company in possession and refusing to let the Milwaukee and Minnesota Company into possession was not an appealable order.

I.

On this appeal no part of the record or proceedings are here for review except what has taken place since the filing of the mandate in this court, in the court below, and only so much of those proceedings as are appealable in their nature, properly.

On the former appeal from the final decree, every thing which could be properly considered was heard and disposed of. Those questions are not open on this appeal, but only such matters as have since occurred, in the proceedings to this decree, now before the court. All the questions now raised by the counsel, except in regard to the final decree entered in September, 1864, were before the court on the former appeal.

By reference to page 26 of the printed brief of the appellants counsel, used on that argument, we find the same objections which he now makes to the orders directing the payment of money, urged in the same language and supported by the same authorities. And on pp. 8 and 15 of same brief we find the same points, arguments, and authorities which are now presented in regard to Chamberlain's claim. These questions, therefore, were fully presented by the counsel on that appeal. The case was then being heard on appeal from a final decree and certain side appeals. It is now on hearing simply on final decree, and if these

2049

questions were not properly before the court at that time, they are not now; and if properly there then, they were disposed of, and cannot be again reviewed at this stage of the proceedings.

II.

No review on appeal can be had at this stage of the proceedings of orders made in the court below for the payment of money. Such objection can only be made on the report of the receiver, where exceptions may be taken on the passing of his accounts. The objections raised to these orders cannot be settled on this appeal.

It does not yet appear that these payments will in any manner affect the rights of the appellant. If the orders were void, they are no protection to the receiver and the payment will not be allowed him.

Second. On this appeal on the record we know othing of the circumstances under which said orders ere made. All of which can be fully and satisfactorrily explained, if they are objected to on passing the various accounts.

The first order was made at a time when it was feared the funds on hand would become entirely worthless in consequence of the failure of the banks of the West from the decline in Southern State bonds, upon which said circulation was based.

The order of January 9th in payment of an important part of the depot grounds in Milwaukee, in the actual occupation of the company, and was lien as to so much of said property prior and superior to the first mortgage even. Record 132, p. 586; also p. 402 and 403.

The payment to the city of Milwaukee was entirely proper, and were the whole proceedings returned would so appear. The city of Milwaukee loaned its bonds to the La Crosse & Milwaukee railroad company to the extent of $314,000, and as security therefor, received two mortgages on portions of the eastern division, which were liens prior to the lien of this mortgage.

The La Crosse company was bound to pay the interest on said city bonds and save the city free and harmless. The company failed to pay and the city was put to cost, trouble and expense, and this order was to reimburse such cost and expense.

Third. The Milwaukee and Minnesota company cannot object, that the fund in court is applied in payment of a lien, subsequent to the Bronson and Soutter mortgage, but which is prior to the right of said company. Bronson and Soutter might object. They have the first right, but it is competent for them to waive it, and the Minnesota company cannot come here, as their champions to insist upon rights that they do not claim. The receiver was appointed in the suit of Sebre Howard, a judgment creditor, whose judgment in the State Court became a lien upon the premises on the first day of May, 1858, *before* the giving of the Minnesota mortgage (record 132, p. 532) subsequent to the mortgage to Bronson and Soutter, the claim of Chamberlain and the judgments of Cleveland. Strictly these liens have priority according to their date and should be paid in that order if insisted upon, by the parties interested; but, should all be paid in preference to the claim or rights of the Minnesota company, the Cleveland and Chamberlain judgments have preference over the Howard judgment and are entitled to payment before it, the same as the Bronson and Soutter mortgage has preference over all other claims. It does not lie with the company, however, to object that the strict order of priority is not observed in payments by the receiver, so long as all the payments are on liens prior to their rights.

Therefore we insist—

First. That these matters have been presented to this ourt on a former appeal and must have been disposed of if properly appealable.

Second. That such orders and payments are not the subject of appeal at this stage of the proceeding or in the manner now presented, it is an attempt to charge the receiver or parties, strangers to the record, without giving them any opportunity to be heard,

Third. That this Minnesota company cannot object, as all these parties rights are superior to said company, and they are not the agents of those having priority.

III.

The order of the Circuit court, denying the appellants' motion, to pay into court the amount due for interest to the complainants, and for possession of the road, is not an appealable order and cannot be reviewed on this appeal.

On the argument of the motion to dismiss the appeal in this cause at this term, the counsel opposed declared most emphatically, that this order, was not the subject of appeal, that no one had ever pretended it was, and that the court had so decided, and *mildly* rebuked us for taking up the time of the court in showing that it was not appealable.

After that, we were hardly prepared for so *sudden* a change of front at the *same* term, and *in the same* court, as his present brief now presents.

He now admits that this order could not be appealed from, before a final decree, and that such was the decision of the court last term in this case but that it can be reviewed now, on the appeal from the final decree. There was a a final decree in this cause before the appeal was heard at the last term was taken therein; that final decree was brought here on an appeal and decided as number 132 from last term. The decree which said appeal was taken was made January 13th, 1862. (Record 132 of last term, page 587.) And the appeal of complainants was taken therefrom January 17th, 1862. (Same Record page 590.)

The order overruling the Milwaukee and Minnesota Company's petition for possession, &c., was made July 21st, 1863, and said company on the same day prayed an appeal from the final decree of January 13th, 1862, and from said order so made.—(Pages 196 and 197, Record of number 268 of last term.) Thus, it will be seen, that there was a final decree before the order appealed from was made and that there was an appeal both from the final decree and order. Yet the court held, the decision on the petition for possession, could

2053

not be reviewed in this court and dismissed the appeal of Milwaukee and Minnesota Company *vs.* Soutter *etal*, see opinion in 268, Dec. term, 1863. We are therefore unable to see the distinction which the counsel attempts to draw and which is precisely similar to the order then before the court and insist, that this order in this same cause cannot be reviewed in this court.

Second. But, were we to admit that this court could review said order, we should insist, that the petition of the Minnesota Company, was properly denied and that the order should be affirmed in this court.

The foreclosure of the Barnes' mortgage was made by a sale under the power in the mortgage, without the intervention of any court. The La Crosse company were not in possession of any part of the mortgaged premises, when the mortgage was given to Barnes, and neither that company or the appellant has ever had possession of any portion of the premises since.

The appellant claims to be the absolute owner of the eastern division, subject to certain liens—the right to be let into possession, the receiver discharged and his accounts settled, &c. The court is also asked to settle the rights of property acquired by the appellant under the alleged foreclosure of the third mortgage by advertisement and sale, as well as those acquired by the Milwaukie and St. Paul Railway Company, under the foreclosure of the Land Grant mortgage.

That these questions, and especially the right of the appellant, can be thus disposed of, on petition *merely* when there is no proper opportunity of contesting its right or legal existence, we entirely deny.

The most favorable view that can be taken of the appellants rights, is that it stands in the place of the La Crosse Company, and is entitled to claim possession of the mortgaged premises to the same extent that the La Crosse Company could—could that company make this claim successfully.

The receiver, Hans Crocker, was first appointed receiver of the premises in question by the District Court of the United States, at the suit of Sebre Howard *vs.* La Crosse and Milwaukie Railroad Company and Selah Chamberlain, and took possession of the property as such receiver.

Howard's judgment in the State court against the La Crosse company was recovered on the first day of May, 1858, and became a lien prior to the Barnes' mortgage.—Record 134, page 21; see also page 531. This judgment was sued over in the Federal court, and judgment obtained there November 28th, 1859, upon which his bill was founded, but the record discloses the original lien of his judgement. The receiver was appointed on this bill, June 9th, 1860, and took possession of the property, June 11th, 1860.—Record 280, page 38.

The appellant did not propose to pay Howard's judgment, therefore Howard was entitled to resist the discharge of the receiver.

The counsel insists that the Howard judgment was disposed of by the opinion of the court in number 132.

The opinion of this court mentions the Howard judgment in the Federal court of November 28, 1859, as not being a lien at the foreclosure and sale under the Barnes' mortgage.

The court were then disposing of the case as made on the hearing in the court below, and on that hearing there was no proof that the State court judgment existed, and therefore could not be considered. It will be seen by reference to Justice Nelson's opinion, that his attention was not called to the State court judgment at all, and consequently that no opinion was expressed in regard to it.

But in this record, and for the purposes of this motion, this judgment does appear (Record 132, page 332) and this judgment is in full force, and a lien prior to the Minnesota mortgage, and the record in the creditor's suit disclosing this fact, his rights must be determined as of that date.

Howard commenced his creditor's suit against the debtor, and Chamberlain the only party in possession of the property, and if the Minnesota company desire to assert its rights to the property, and have the receiver discharged, it can do so only by making itself a party defendant to Howard's bill, and filing a cross bill, so that Howard can have an opportunity of establishing his own rights, and contesting the pretences and claims of the Minnesota company The idea that this Minnesota company, which has never had possession of the property, and never had its rights adjudicated ar established, after Howard has had a receiver for over four years, can by a side motion of this character, without making itself a party to the suit, or placing itself in a situation where its rights or the rights of Howard can be properly determined, take the property in question from the hands of the receiver is perfectly preposterous. Howard claims that his judgment is a lien upon this property, and has taken the proper steps to enforce that lien, and have the property applied to its satisfaction, has made that lien effectual by having that property placed in the hands of a receiver, and if any party desires to contest his right to that property, it must be done by a regular suit, and not by a summary process in which the rights of parties cannot be examined and determined.

Second. The counsel's doctrine that the suing over of a judgment in another government or jurisdiction, from that where the first is obtained, is a merger of the first or original judgment, and that thereby the lien of the first judgment is destroyed, is a doctrine so entirely *new* and *original* to me, that I am unable to meet it by a serious argument.

Does the counsel mean to say that if he has a judgment in Wisconsin, and sends a transcript thereof to Illinois and has it sued in that state, that thereby the judgment in Wisconsin is merged so that it can no longer be enforced? Is the real estate bound by his Wisconsin judgment thereby released? and should he issue execution upon it, could it not be enforced? I will not spend further time on such a proposition.

Third. The counsel says "if the federal did not merge the State judgment, still, Howard has not become an actor by cross-bill, and has not asked the appointment of a receiver." It was not necessary for

Howard to file a cross-bill in this action. He *had* become an actor. He had filed his own bill, and in his suit the receiver was appointed.—Record 280, page 38. The stipulation that the counsel refers to, was not in force at the time the petition of the Minnesota company was filed or decided. It was a stipulation on certain conditions, which failed entirely. Record 268, pages 87 to 91. The fact that Howard opposed the granting of the petition, is inconsistent with the idea that he was at the same time stipulating to grant it.

Lastly. The counsel says this judgment was only $ 20,000, and therefore a receivership should not be continued over millions of dollars worth of property to protect such a judgment.

A judgment for $20,000 is just as sacred an obligation as one for twenty millions, and if this property, as he represents, was really worth millions, he could well afford to pay this comparatively small amount, instead of riding over it. This court will do "equal and exact justice to the rich and poor," and no man must be turned out of court, because his judgment is small. Since May, 1858, Howard has been using every exertion in his power to collect this small sum, and so far without success, which fact of itself is a sufficient refutation of all the high sounding claims of the counsel and his client, in regard to the value of this property, which, by no possibility, can be made to pay the liens upon it, prior to the claim of the Minnesota company, into a million of dollars.

We therefore insist that the receiver could not be discharged, or the Minnesota company put in possession, against the rights of Howard.

IV.

The Minnesota company could not be put in possession, or the receiver discharged on said petition, against the remonstrance of Chamberloin, or, if discharged, the possession of the premises in question should have been given to Chamberlain under his lease.

Chamberlain was a judgment creditor, both in his own right and as assignee of the Cleveland judgment. Record 132, page 249 and also 258.

As such judgment creditor being a party to the suit he was entitled to insist that the receiver should be retained, as against his debtor a co-defendant, courts do not as matter of course, discharge receivers upon discontinuance, any party interested in the fund may object and the court will if necessary, direct a party to file a new bill to protect his rights.

Whitehead *vs.* Pendegrast, 2 Bar. Chy. rep. 471.

Langan *vs.* Bowen, 1 Sch. and Lef. 296.

Mirrough *vs.* French, 2 Moll. 497.

White *vs.* Lord Westworth, 2 Moll. 128.

Hubbard *vs.* Gailes, 2 Duer, 688.

Field *vs.* James, 11 Geo. 413.

A receiver may be appointed on the application of one defendant against a co-defendant.

Henshaw *vs.* Welles, 9 Humph. 569.

Hiles *vs.* Moore, 15 Law and Eq. 130.

If receivers are appointed on such requests, they will certainly be retained under like circumstances.

The reason why but one receiver is appointed of the same fund, even when application is by one having a superior lien, is, that the former appointment will enure to his benefit.

Beverly *vs.* Books, 4 Gratt. 187.

Samson *vs.* Rickets, 1 Bland chy. 213, also 431; 2 Hoffman's chy. p. 130.

Second. But if the court were of the opinion that the receiver should be discharged, then I insist, that Chamberlain was entitled to be restored to the possession and enjoyment of this property under his lease. Record 132, pp. 250–1, 2 and 3.

Chamberlain received this lease from the Lacrosse and Milwaukee Railroad Company, September 26th, 1857, and on the same day took possession of the road and retained such possession until the 18th day of May, 1860, on which day he surrendered the possession of the same to the complainants, upon their demand for the same under the provisions of the mortgage in this cause, but with the written agreement and understanding that said possession would be restored to him under said lease whenever said complainants' claim in this cause should be satisfied, that the judgment in his favor, (record 132, p. 250,) is the judgment for the amount his due at the time of giving said lease, and that there is now his due on said judgment the sum of at least $418,616.70, with interest thereon, from the first day of September, 1861, as reported by the masters in this cause.—Record 132, pp. 319, 324. That said indebtedness is wholly for labor done and materials furnished in building said road, as appears from the report of said masters. Record 132, pp. 325, 411 and 412, and that in addition to the amount so reported as due Chamberlain by said masters on said judgment in his favor. He is the owner of the Cleveland judgment upon which there was remaining due at the time of denying said petition of said Minnesota Company over $76.000. Record 280, p. 47. Record 132, p. 304.

That at the time said applications was made to discharge the receiver and put said Minnesota company in possession, these sums amounting to nearly $600,000, as reported by said masters, were actually due to said Chamberlain and all a lien upon said property prior and superior to the Bares mortgage and the Minnesota company. The said application of said company proposed entirely, to override and ignore these rights of Chamberlain, to adjudge them of no validity, on the mere petition of said company and place it in the enjoyment of this property so created by the means and labor of Chamberlain.

The consumation of this scheme was successfully resisted by Chamberlain and the counsel now asks a review of the order denying his client's application, and is loud in his complaints of the gross injustice done him.

He has made several points in his brief againt the claim of Chamberlain and in support of his motion, which I will notice in their order briefly.

First. Cleveland, a judgment creditor of the La Crosse company, a judgment creditor, whose judgment was subsequent to Chamberlain's, filed a bill against said La Crosse company, and Chamberlain to impeach the lease and judgment of Chamberlain as fraudulent against creditors, and such proceedings were had that a decree was entered vacating and annulling said lease and judgment. The counsel now insists that the effect of that decree was to vacate and annul said judgment and lease as to all the world and that they are now of no force or effect, as between the parties thereto—such is not the law. The only effect of that decree was to postpone said lease and judgment to Cleveland's judgment. No other party can claim any advantage from it.

I, Greenleaf's Ev. Sec. 522–524.
Schultz Appeal, 1 Penn Stat. Rep. 257,
Hunt's Lesse's *vs.* Michiel, 1 Wash. C. C. Rep, 70.
Baring *vs.* Fanning, 1 Paine C. C. Rep. 549.
Broom *vs.* Wyncoop, 2 Blackford 230.
King *vs.* Chase, 15 N. H. 9.
2 Phillips Ev. 49, Note 273 (Edward Ed.)
Ibid 11, " 279.
Starkies Ev. 52, (Am Ed.) 285–203.

The counsel now claims that this decree was made on the ground that the company had no power to make the lease. If that were so, still Cleveland would have no authority to institute a suit for that purpose. It would be a matter between the company and the State solely.

Redfield on Railways.

But in truth chapter 121 of the laws of Wisconsin for 1856, page 313, authorises a railway company to mortgage, pledge, or transfer its road and franchises in any manner the company might see fit to do so. This cause was appealed to this court and dismissed be cause, after the decree below, Chamberlain purchased Cleveland's interest, and was then the sole party interested. 1 Black 419.

Second. It is claimed that Chamberlain abandoned his lease, because he failed to pay the interest on the mortgage which the lease provided he should do.

His lease required him to pay the interest out of the net income of the road.

The contract executed on the same day required Chamberlain to credit said company on the first day of July, 1858, and on the first days of July and January thereafter with such amount as might be in his hands, from said net earnings on said days, and render the company a statement of account.

Such application was made on the first day of January 1859. From that time to the first day of September 1859, a period of eight months. When default occurred in the payment of interest on this mortgage the total net earnings of the entire road from Milwaukee to La Crosse was only $63,175.62. As appears by the master's report. Record 132, p. 398.

The total disbursements by Chamberlain during the same time from the net earnings.

For right of way and gravelling, amonnted to - - - - - -	$16,405 23
And for interest on mortgages paid	88,424 25
Making his total disbursement for same time - - - - - -	$104,829 48

As appears by the report of the master's schedule 4.

2063

Record 132 page 322 and 323, thus showing that Chamberlain was compelled to advance from his own funds during said eight months $41,653.86 in order to meet the interest required to be paid by the lease.

On the first of September the interest on the second and city mortgages fell due, amounting to over $50,000, and on the first of November following, the interest on the Palmer mortgage and sinking fund amounting to $50,000 more.

It was under such circumstances that default was made in the payment of the interest on this mortgage, which the counsel insist was fraudulent, an abandonment of his lease and that thereby all his rights under it were forfeited and done without a view and purpose of procuring a foreclosure of this mortgage. Any one slightly skilled in finance will readily discover adifferent reason,and ample cause, for the failure to pay this interest, and it is most earnestly claimed that such failure did not forfeit Chamberlain's rights under said lease, but that whenever the interest on the mortgage in this case is paid that he is entitled to be restored to the possession of this road under said lease.

Third. It is insisted by the Minnesota company that this lease is void as to creditors, and, therefore, that Chamberlain has no rights under it, and cannot claim the possession.

There is no proof that it is fraudulent and it cannot be impeached by petition if it was, but only by bill filed.

Second. The Milwaukee and Minnesota company is not a creditor, they claim, as purchasers merely, on a sale by advertisement, under a mortgage given after Chamberlain's lease and judgment, and while he was in the enjoyment of the property and with full knowledge. If the stockholders of the Minnesota company were ever creditors; this character as creditors, was merged in the mortgage and subsequent sale, and they are now mere subsequent purchasers of the La Crosse company, with full notice and in that character they cannot inquire into the prior frauds of their vendor. (Opinions in No. 132, December Term, 1863.)

Clark *vs.* French, 23 Maine 221.

Foster *vs.* Watson, 5 Malts. 388.

Williams *vs.* Bank, 11 Maryland 198.

Moseley *vs.* Moseley, 15 New York 374.

Revised Satutes of Wis., 1849, chap. 75–88, 1 and 2.

The Minnesota company recognized and acknowledged the rights of Chamberlain, after their organization, by treating with him in respect to the property.

Record 280, p. 48 and 49.

Third. The masters have reported the debt included in the judgment, and secured the lease as just.

It was claimed on this motion that Chamberlain was not entitled to favor because he had not taken any steps to enforce his judgment since the commencement of the foreclosure. This objection is not well taken, as he has prosecuted his claim. See his answer, Record 132, pages 52, 3 and 4, pages 297 and 8, 301.

On the hearing of exceptions, the court gave the defendants leave to file a cross bill to contest his claims, (Record 152 p. 586,) and provided that if it was not filed by the first Monday of February then next, it

2065

would be considered by the court as waived. Such bill was filed by the Minnesota company, answered by Chamberlain and proposed for hearing, but when ready for a hearing it was dismissed on the Minnesota company's own motion. We therefore insist that Chamberlain has been earnest in pressing his claim.

V.

The mandate of this court directed the Circuit Court—First, "to enter a decree for all the interest due and secured by the mortgage, with costs."

Second. To ascertain the amount in the hands of the receiver applicable thereto and apply the same; and if such money thus applied were not sufficient to pay the amount due March 1st, 1864, to ascertain the balance remaining due at that date; and in case such balance is not paid within one year from the date of the order ascertaining it, then order of sale, &c. Record 280, p. 9.

On the 26th of April, 1864, it was referred to Jerome R. Brigham, as a special master, to report the amount due, and the amount in the receiver's hands applicable thereto, and on the 27th of April he reported the amount due $365,260.05, and that from the receiver's report the whole amount in his hands was $106,458.13, and that there were outstanding claims against the receiver amounting to $45,000. Record 280, p. 65.

The complainants therefore insist that the amount due for interest was thus ascertained, and also the amount in the hands of the receiver applicable to this purpose. And that the order of sale should have been in one year from the date of that report, and that it was not contemplated that the complainant should await the result of long litigation between the defendants and persons not parties, as to the amount of money which the receiver ought to have had in his hands. Opinion No. 132, Dec. Term, 1863.

Such would seem to have been the understanding of the counsel opposed at that time; for on the 21st of April, immediately after the filing of the mandate he procured an order on the receiver to report on or before the Saturday then next the amount of money in his hands in this cause. Record 280, p. 16.

On the 23d of April, 1864, in answer to that order the receiver reported the amount of money in his hands as such receiver including the amount received by the Milwaukee and St. Paul Railway while they were operating said road. Record 280, pp. 20 to 32. Afterwards, and on the 26th day of April, the complainants moved for an order of reference to Jerome R. Brigham, Esq., special master to ascertain and report the amount of interest due on the bonds on the first day of march. Also what monies the complainants have already received in this suit. Also that from the receiver's report he ascertain and report the amount now in the receiver's hands applicable to the payment of interest and that he report the balance due as of said first day of March. And that said special master report forthwith; but this order, report and action not to preclude either party from going fully into the

2067

matter on passing the receiver's accounts. Record 280, p. 37.

The report of the special master was made on the 27th of April, and will be found on page 65, record 380. Upon these reports and proceedings the complainants applied for this decree, and I insist that it should have been granted, under the mandate of this court, but it was refused.

A reference was then made to H. L. Palmer as auditor, who's labors have not yet ceased and we fear will not have terminated at the next term of the Circuit Court. His principal inquiry has been, not what the receiver *had* in his hands, but what he *would* or *should* have had, if he had had the benefit of Higby's Elevaor which stands upon the depot grounds and was erected by Higby under a lease and always occupied by him—and also had the use and benefit of the rolling stock delivered to the Milwaukee and St. Paul company under its purchase of the Western division. It is imposssible to pass the receiver's account fully until his receivership is closed. There are many suits and contingent liabilities pending over the receiver connected with the operation of the road and if we are to wait for evidence until one year after these are all settled the prospect of a sale under our foreclosure is removed indefinitely.

At the September term of said court the present form of decree was suggested from the bench as fairly carrying out the spirit of the mandate and was therefore accepted and entered.

We now insist that the decree should have been as above stated, founded upon the receivers and masters reports, and that it should have been entered at the April term, 1864.

And inasmuch as the defendants will have had the year's time contemplated in the original mandate at the next term of said circuit court, we submit, that if this decree is reversed, that the decree should be entered as of last April term, or that tne order for a year's time before sale should be modified in that respect.

JOHN W. CARY,
Counsel for Complainants.

2049

Supreme Court of the United States.

No. 280.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY AND A. FLEMING, APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVOR OF GREENE C. BRONSON, DECEASED, APPELLEE.

This appeal is in the second mortgage foreclosure suit, so called, which was heard and decided in this court at the last term as number 198 of the term of December, 1863, and is an appeal from all the orders and proceedings had in said cause in the Circuit Court for Wisconsin, at the April and September terms thereof, A. D. 1864, subsequent to the filing of the mandate of this court.

The appeal is general, specifying no particular order from which it is taken, and as there has been no final decree in the cause or order from which an appeal could be taken according to the practice of this court, this motion to dismiss has been filed.

The following brief abstract shows the proceedings in this cause in the court below after the filing of the mandate of this court to the time of this appeal, as appears from the printed case.

On the 18th of April, 1864, the Milwaukee and Minnesota Railroad Company filed its petition setting forth that by an order of the District Court of Wisconsin, made in this cause, July 6, 1860, Hans Crocker was appointed receiver of the mortgaged premises in this cause, and took possession thereof by virtue of such order, and continued in possession thereof till June 12, 1863, on which day, without any authority, he surrendered it to the Milwaukee and St. Paul Railway Company, which Company had used

13 Peters 404 — 279
11 Peters 175 - 18 Howard 79

said premises and the rolling stock belonging thereto in common with the western division of said road, which surrender was in compliance with the order of the District Court in this cause of June 12, 1863, which said order was void; and that said Milwaukee and St. Paul Railway Company had not complied with said order by paying over the income to said receiver; that said receiver had never made any detailed statement of his receipts and disbursements; and that the statements made by him showed that these receipts and disbursements were mixed up with other receipts and disbursements.

That said receiver admitted in his hands $47,203, and that there was in the hands of the Milwaukee and St. Paul Railway Company between $200,000 and $300,000 applicable to the payment of interest in this cause; that said petitioner desired to have said moneys applied, and offered to pay the balance of the interest due, to the end that said receiver might be ordered to deliver over said mortgaged property to said petitioner as the rightful owner thereof, subject to incumbrances, and that the exact state of the business accounts might be afterwards ascertained.

That no other defendant claimed to be the owner of the equity of redemption of said premises or had asked affirmative relief; that Chamberlain had no right or interest therein, because in the suit of Cleveland, a creditor of the La Crosse Company, his lease and judgment had been annulled so as to be of no force or effect whatever. The petitioner then prayed that the Milwaukee and St. Paul Railway Company pay over to Crocker and surrender to him the road; that said Crocker surrendered said road and property to the petitioner on the petitioner's paying into Court sufficient to pay, with the moneys in the receiver's hands, the interest then due; and that Crocker and the Milwaukee and St. Paul Railway Company might file their accounts and the petitioner have leave to except. (See printed case, pages 1 to 6.)

Afterwards, on the 21st of April, 1864, an order was made on the application of the Milwaukee and Minnesota Company requiring the receiver to report the amount of money in his hands, and another order requiring him to show cause why he should not be attached for contempt for not operating the road as required by his appointment, and also requiring the Milwaukee and St. Paul Railway Company to show cause why they should not be attached for

2073

contempt in interfering with said road. (See printed case, pages 16 and 17.)

On the 23d of April, 1864, the receiver filed his accounts as required. (See case, pages 20 to 32.) Afterwards, and on the 26th day of April, 1864, the receiver, Selah Chamberlain, and the Milwaukee and St. Paul Railway Company filed their several answers to the aforesaid petition and rule to show causes, by which it appeared that Crocker did not take possession of the property in question by virtue of his appointment as receiver in this cause, but that he took such possession on the 11th day of June, 1860, by virtue of two appointments of the District Court: one, in the case of Bronson, Soutter, and Knapp, being the Western Division Land Grant foreclosure suit, and the other in the case of Sebre Howard against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain; and that afterwards, on the 6th day of July, 1860, an order was entered in this cause appointing him receiver herein; that as such receiver he operated the road from Milwaukee to La Crosse from said 11th day of June, 1860, to the 12th day of June, 1863, on which last named day an order was entered by said District Court, in said Land Grant foreclosure suit of Bronson, Soutter, and Knapp, directing said receiver to deliver to the Milwaukee and St. Paul Railway Company, as purchasers through Pratt and White, under the decree in said Land Grant suit, of the Western Division, 105 miles of said railroad, together with a certain porportion of the rolling stock purchased by the receiver, and also all the rolling stock of which the receiver took possession on the said 11th day of June, A. D. 1860. (See printed case, page 41; also, page 53.)

It also appeared that on the 12th day of June, 1863, an order was entered in the Circuit Court in the case of said Sebre Howard, directing said receiver to allow said Milwaukee and St. Paul Railroad Company to operate said eastern division of said road in connection with the west division, and account to the receiver for the proceeds. The answer of Chamberlain denied that the petitioner was the owner of the equity of redemption or entitled to the possession of the said eastern division on paying the interest due on the mortgage described in the complaint in this cause; that he was the owner of the Cleveland judgment, which was a lien on said road prior to the pretended claim of the Milwaukee and Minnesota Railroad Company, upon which over $76,000 was then due, and that said receiver should not be discharged until the same was paid; and further insisted that if said receiver was discharged, that he was entitled to the possession of said road, under and by virtue of the provisions of a mortgage lease, executed by the La Crosse and Milwaukee Railroad Company to him in September, 1857, to secure to him the payment of a certain indebtedness from said company; that under and by virtue of its provisions he took possession of said railroad, and continued in the possession and operation of the same from September, 1857, to about the 1st of June, 1860, when he surrendered the same to the complainants in this cause, upon their demand for the possession thereof, under the provisions of the mortgage described in the bill of complaint, which was a lien prior and superior to said mortgage lease; which said surrender was made on the written agreement of the complainants to restore to said Chamberlain said possession whenever their claim for arrears of interest on said mortgage should be satisfied; and that there was due said Chamberlain on said mortgage lease the sum of over five hundredthousand dollars, as appears by the proceedings in this cause. (See printed case, from page 37 to 64.)

On the 28th day of April, 1864, said petition, and the answers thereto were heard by the court, and the judges being divided in opinion, the same was dismissed.

Afterwards, on the 27th day of September, 1864, the Milwaukee and Minnesota Railroad Company filed its petition for the removal of Hans Crocker, as receiver in this cause, and for other purposes. Which petition and exhibits are contained in the printed case, from pages 112 to 261.

This last petition was, by order of the court, continued.

On the 27th of September, also, the Milwaukie and Minnesota Railroad Company moved the court for an order requiring the receiver in this cause to pay into court all the money in his hands; which motion was denied on the 29th of September. (See printed case, pages 112 and 263.)

On the 26th of April, 1864, Jerome R. Bingham, Esq., was appointed a special master, to ascertain and report the amount of interest due on the bonds specified in the bill of complainant on the 1st day of March, 1864; also what moneys the complainants have already received in the suit; also the amount in the receiver's hands applicable to the payment of interest, and that he report the balance due as of said first day of March, but this report not to preclude further examination into the receiver's account. (See page 37 of printed case.)

2075

Which report was made April 27th, 1864, and appears on page 65 of the printed case.

Afterwards, on the 27th of September, 1864, a decretal order was made, based on said report, fixing the amount due for interest, and ordering and adjudging that unless the same be fully paid at or before the expiration of one year from the date thereof, that the usual order will be made for a sale of the mortgaged premises.

(See printed case p. 261, 262.)

The only orders, therefore, made in the case, not asked for or assented to by the appellant, are:

1st. The order of April, 1864, dismissing its petition.

2d. The order of September 29th, refusing its motion requiring the receiver to pay all monies in his hands into Court.

3d. The decretal order of September 27th, 1864, ascertaining the amount due for interest and determining when a final decree of foreclosure and sale will be made if it is not paid.

From these orders this appeal is prosecuted. Can it be entertained?

The order of April 28th, dismissing the appellant's petition, has none of the requisites or qualities of a final decree.

It does not dispose of the property, but leaves it in the hands of the Court for future disposition.

It was a matter connected with the practice of the Court and its manner of transacting its business, which is always a matter of discretion, and cannot be reviewed on appeal.

(See printed case, pp. 14, 15.)

2d. The petition showed no right in the appellant to the possession, in case the receivers were discharged.

They claim to be a corporation organized under a general statute, and to have succeeded to the rights, privileges, franchises and property, that were of the La Crosse and Milwaukee Railroad by virtue of a foreclosure, by advertisement, without suit, of a mortgage given by said La Crosse and Milwaukee Railroad Company.

A party claiming under such a title must establish his right by judicial proceedings against the party in possession; and the validity of his mortgage and his proceedings to foreclose are all open to attack. Hence, in order to obtain possession, he must bring ejectment or other proper action in which his title can be contested. He is not entitled to be put in possession on mere motion or by petition. The appellant has never been in possession of any part of this property.

3d. The proceedings in the case show that if the receiver were to be discharged, that Chamberlain, and not the appellant, would be entitled to the possession of the property.

Chamberlain received this property in September, 1857, by grant from the La Crosse and Milwaukee Railroad Company in the shape of a mortgage lease, as security for over half a million dollars then due and owing him from said Company, with the right to hold and operate the same subject to prior incumbrances until he was fully paid. He remained in possession until after the commencement of this suit, and then yielded his possession to the complainants upon their demand under their mortgage, but with the understanding that the possession would be restored to him whenever the complainant's claim was satisfied. The proceedings in this cause show that about five hundred thousand dollars still remain due to him on said mortgage lease.

His lien is prior to the mortgage of the Minnesota Company, and he was in the actual possession of the property under his mortgage lease when their mortgage was executed.

It is therefore clear that his right is superior to that of the appellant, and that he will be entitled to the possession whenever the receiver is discharged.

II.

The denying the appellant's motion to have the receiver pay the money in his hands into court is so clearly a matter pertaining to the practice of the court below, and entirely within the discretion of that court, that I cannot believe that the appellant will insist upon his right to appeal therefrom, and therefore will not attempt to discuss it.

III.

The decretal order of September 27, 1864, is not a final decree, nor in the nature of such a decree. The ordinary decree of foreclosure and sale, although not strictly a final decree, has been treated in the practice of this court as so far final that an appeal might be taken therefrom.

But this is not a decree of foreclosure and sale.

It is nothing more in effect than an order confirming the report of the special master of the amount found due on the mortgage, and a statement or determination of the time when the court will proceed to enter a final decree of foreclosure and sale, provided said amount is not paid. It is not a decree authorizing a sale if that amount is not paid. The court refused to make such a decree. This order by its very terms requires that another decree shall be made before we are to have execution. To say that such a decree is final is a contradiction of terms. We can have no execution or benefit of this decree until a further and final decree is made. No appeal, therefore, can lie to this court.

The mandate of this Court directed the Circuit Court, "first, to enter a decree for all the interest due and secured, by the mortgage with costs."

2d. To ascertain the amount in the hands of the receiver applicable thereto and apply the same; and if such money thus applied were not sufficient to pay the amount due March 1st, 1864, to ascertain the balance remaining due at that date; and in case such balance is not paid within one year from the date of the order ascertaining it, then order of sale, &c.

(See printed case, p. 9.)

On the 26th of April, 1864, it was referred to Jerome R. Brigham as a special master to report the amount due, and the amount in the receiver's hands applicable thereto, and on the 27th of April he reported the amount due $365,260 05, and that from the receiver's report the whole amount in his hands was $106,458 13, and that there were outstanding claims against the receiver amounting to $45,000.

(See case, p. 65.)

The complainants therefore insist that the amount due for interest was thus ascertained, and also the amount in the hands of the receiver applicable to this purpose. And that the order of sale should have been in one year from the date of that report, and that it was not contemplated that the complainant should await the result of long litigation between the defendants and persons not parties, as to the amount of money which the receiver ought to have had in his hands.

JOHN W. CARY,
Of Counsel for Appellees.